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IN THE

Supreme Court of the United States

October Term, 1953

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GUSTAF RENSTA, d.b.n.c.t.n. of the Estate of Olof Zetterlund, Deceased, substituted in the place of Samuel Nelson, as Executor, now Deceased; *et al.*,
Petitioners,

vs.

BEVERLY BEACH PROPERTIES, INC., a Florida corporation; JAMES Q. BURDET; *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA.

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GUSTAF RENSTA, d. b. n. c. t. a. of the Estate of Olof Zetterlund, Deceased, substituted in the place of Samuel Nelson, as Executor, now Deceased; *et al.*,

Petitioners,

VS.

BEVERLY BEACH PROPERTIES, INC., a Florida corporation; JAMES Q. BURDET; *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioners, who are (1) Gustaf Rensta, d. b. n. c. t. a. of the Estate of Olof Zetterlund, deceased, substituted in the place of Samuel Nelson as Executor, now deceased, (2) Amanda Nelson as Executrix of the Estate of Samuel Nelson, deceased, as devisee and distributee under the Last Will and Testament of Olof Zetterlund, deceased, suing on behalf of herself as such devisee and distributee and all other persons similarly situated, and as a stockholder of Elsinore Beach Corporation, a Florida corporation and Halland Land Company, a Florida corporation, suing on behalf of herself as such stockholder and all other stockholders of each of said corporations, (3) Elsinore Beach Corporation and (4) Halland Land Company, pray that a writ of certiorari issue to review the final judgment of the Supreme Court of the State of Florida entered in the above entitled case on December 3, 1953 (R. 1025).[1]

Opinions Below.

The opinion of the Supreme Court of the State of Florida, dated July 31, 1953, is reported *sub nom. Beverly Beach Properties* v. *Nelson* at 68 So. 2d 604 (R. 913-925).[2]

This opinion represented a reversal on rehearing of the previous per curiam determination of that Court, dated February 27, 1953, also reported at 68 So. 2d 604 (R. 891-892) which affirmed an unreported opinion and decree of the Circuit Court of Broward County, dated March 11, 1952, printed at R. 614-636, rendered in favor of petitioners. It was also inconsistent with an earlier opinion of the Supreme Court of Florida on a prior appeal, dated May 12, 1950, reported *sub nom. Nelson* v. *Beverly Beach Properties* at 47 So. 2d 310 (R. 505-515)[2] (and with the opinion denying rehearing on that appeal dated July 14, 1950, likewise reported at 47 So. 2d 310 (R. 534-536)[2]) in which the issues of the complaint had been decided in favor of petitioners, but remanded for further consideration of the scope of the remedy to be afforded petitioners by way of rescission or otherwise. This prior appeal represented an affirmance, except in one minor detail, of an unreported determination of the Circuit Court of Broward County on the first trial, February 18, 1949, printed at R. 215-222.

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[1] "R." references are to the Transcript of Record; "P. App." refers to the separately printed white Appendix to the Petition. The unprinted exhibits referred to have been filed with the Court.

[2] Not officially reported.

The opinion of the Supreme Court of Florida in the related case of *Miller* v. *Nelson* is reported at 160 Fla. 410, 35 So. 2d 288;[1] the opinion of the Court of Appeals for the Ninth Circuit in a related case captioned *Nelson* v. *Miller* is reported at 201 F. 2d 277.

Jurisdiction.

This Court has jurisdiction to review the final judgment herein questioned under Sec. 1257(3) of the Judicial Code, 62 Stat. 929 (1948), 28 U. S. C. Sec. 1257(3).[2]

The action was instituted by the Florida executor of Olof Zetterlund, and others, to recapture from the purchaser real property in Florida which had been sold by a California guardian of Zetterlund's person and estate who had been appointed because of Zetterlund's incompetency. The appointment was made on May 23, 1945, approximately three months prior to Zetterlund's death, while he was sojourning in California. Petitioners maintain that it was erroneous under the full faith and credit clause and a denial of substantive and procedural due process for the Supreme Court of Florida to recognize as determinative of the cause, as it did, an order in the California incompetency proceeding which the Florida court construed as approving the sale.

The federal questions were appropriately raised before the trial court. Petitioners in their Bill of Complaint alleged that the California incompetency proceedings were

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[1] This opinion is reprinted as Appendix B, *infra*, pp. 4a-15a.

[2] The ninety-day period prescribed by 28 U. S. C., Section 2101(e), within which to seek a review by writ of certiorari, commenced December 4, 1953, and terminated March 3, 1954. On February 4, 1954, Mr. Justice Black, agreeable to 28 U. S. C., Section 2101(c), made an order extending the time for filing petition for writ of certiorari to and including May 1, 1954 (R. 1029).

"absolutely null and void" because "Olof Zetterlund was not domiciled in the State of California at any time during the pendency of said proceedings" and because he "was not seized of any real property or tangible personal property located and situated within the State of California" it being alleged on the contrary that "The situs and location of the intangible personal property of Olof Zetterlund described in said California proceedings * * * was the State of Florida" and "The physical evidence of said intangible property was all of the time located in Florida" (R. 66-67). They also alleged that the California proceedings were invalid under California statutory law, in that proper notice was not given and the California court exceeded its statutory jurisdiction (R. 66-67). The respondents Samuel Friedland and Beverly Beach Properties, Inc., hereinafter referred to as the "respondents" denied these allegations in their answer (R. 145-146) and pleaded that the California proceedings "must be given full faith and credit by this Court, by virtue of the provisions of Section 1, Article IV of the Constitution of the United States, and the Statutes implementing the same" (R. 160).

The trial court, on the first trial, rejecting the respondents' defense, held that the California guardian "had no authority to function as such in Florida" (R. 216), and that petitioners were entitled to rescission if fair restitution could be made, and if not, to money damages (R. 219, 220). On appeal the Supreme Court of Florida unanimously and expressly rejected respondents' contention that the California proceedings were entitled to full faith and credit, stating:

> "The fact that a foreign guardian has no authority to function in Florida without taking ancillary guardianship proceedings is too academic to require supporting authorities" (47 So. 2d 310, 313; R. 509).

The Supreme Court of Florida agreed that petitioners were entitled to relief, and remanded for further consideration of the sole issue of what form that relief should take (47 So. 2d at p. 314; R. 510). Respondents thereupon sought a rehearing, renewing the issue of full faith and credit (R. 519). The Court denied the petition on July 14, 1950, adhering to its original decision (47 So. 2d 310; R. 534-536).

On remand, following a second trial confined to the single issue of the form of relief, and particularly the extent to which respondents should have restitution, the trial court, on April 17, 1952, entered a decree granting rescission to petitioners and fixing the restitution to which respondents were entitled (R. 621-636). Thereupon, upon appeal by respondents, who once more urged that full faith and credit had been denied the California proceedings (R. 639), the Supreme Court of Florida, on February 27, 1953, unanimously affirmed the disposition made by the trial court (R. 891-892), stating *per curiam* that:

> "We have searched diligently and are not advised in what respect the quality of justice could have been improved * * *.
>
> "The law of the case was pronounced in the former opinion and appears to have been followed scrupulously" (68 So. 2d at p. 606; R. 892).

Respondents then filed a petition for rehearing, once again claiming a denial of full faith and credit (R. 897, 899), whereupon the Supreme Court of Florida, on July 31, 1953, one judge dissenting and another not participating, in disregard of all its previous opinions, dismissed the complaint as to these respondents on the ground that the California proceedings were entitled to recognition in Florida both as a matter of full faith and credit and comity (68 So. 2d 604; R. 913-925).

Petitioners thereupon, on August 14, 1953, filed their petition to vacate the last decision of the Supreme Court of Florida (R. 925-994) claiming that the Court had erroneously decided the full faith and credit issue and denied the due process to which petitioners are entitled under the Fourteenth Amendment (R. 959, 980, 986, 987). The petition for rehearing was denied on December 3, 1953, without opinion (R. 1025).

It thus appears that the federal questions were seasonably raised and in fact decided by the Supreme Court of Florida.

The order below was a final adjudication of the issues between petitioners and respondents Samuel Friedland and Beverly Beach Properties, Inc. in that it dismissed the complaint as against those respondents, although remanding for reconsideration of the matter of costs (68 So. 2d. at p. 612, R. 925; R. 1027-1028). Remand on the issue of costs does not render an otherwise final order non-appealable (See *Dickinson* v. *Petroleum Conv. Corp.*, 338 U. S. 507, 518). In addition to dismissing the complaint against these respondents, the order below remanded the cause insofar as it affected the claims of Rasco and Burdet so that the Chancellor might consider those claims if he so desired (68 So. 2d at p. 612, R. 925; R. 1027-1028). Rasco was a real estate broker and attorney (R. 63) and Burdet an employee of Elsinore (R. 12) whom petitioners had named as defendants on the ground that they were not entitled to retain the sums received by them by virtue of the transaction in suit. The trial court had ordered Rasco to restore the sum of $54,389.54 and Burdet the sum of $13,965.80 to Elsinore and further directed that Rasco dismiss an independent action he had brought for further remuneration (R. 632-633). As this Court said, in *Clark* v. *Williard*, 292 U. S. 112, 118, in holding the order in that case to be a final one although it did not represent a complete determination of the litigation as against all respondents, "So far as these respondents are concerned, there is nothing more to be decided." See, similarly, *Dickinson* v. *Petroleum Conv. Corp.*, 338 U. S. 507, 513-516. If this Court should nevertheless deem the judgment of the Supreme Court of Florida not final, it is respectfully requested that a notation to that effect be made in the memorandum denying the writ.

Statement of the Matter Involved.

In May, 1945, Olof Zetterlund, aged 86, an incompetent Florida domiciliary, was sojourning in California in the company of his housekeeper, Dora Miller. All his property and the source of all his income was in Florida.

The Supreme Court of Florida so found in the case of *Miller* v. *Nelson*, 35 So. 2d 288 (April 30, 1948) hereinafter referred to as the "domiciliary probate proceedings",[1] initiated by the State of California, Dora Miller and one Harold Davidson, where, after a full trial of the issues of domicile and of the situs of Zetterlund's property it adjudicated that Zetterlund's will should be probated in Florida. The Court there found that Zetterlund was domiciled in Florida for nearly fifty years and that there was not sufficient proof that he had either abandoned his Florida domicile, or intended to change his domicile to California or, indeed, that he had sufficient mental capacity to form the intent to change his domicile to California (*id.*, pp. 292-293), and also found, *inter alia*, as follows:

> "4. All of his property and the source of all of his income was located in Florida.
>
> "5. The *only* property possessed by the deceased in the State of California at his death were two suits

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[1] Reprinted as Appendix B, *infra*, pp. 4a-15a.

> of clothes, some shirts, socks and shoes. He did not own any real property in that State.
>
> "6. His corporate stock in various corporations in which he was interested were situated in Florida." (*id.*, p. 292)

We shall hereinafter show that all the parties to this litigation acknowledged that this decision, except as it was subject to possible reversal by the Supreme Court of the United States, was conclusive on the issue of Zetterlund's domicile (*infra*, p. 37), and in fact review in this Court was never sought.

At that time Zetterlund was the owner of 65.53% of the stock of Elsinore Beach Corporation (hereinafter referred to as "Elsinore") (P. App. 3), and all the stock of Halland Land Company (hereinafter referred to as "Halland") (P. App. 3), both Florida corporations (R. 144).[1] The certificates of stock representing Zetterlund's ownership in these corporations were in Florida and at no time were located in California (P. App. 29 and 45; R. 957; 35 So. 2. at p. 292). The sole asset of each of these corporations was Florida real estate (R. 69). Elsinore owned approximately 850 acres of land in Hollywood, Florida (P. App. 17), which it had acquired in 1929. It had never possessed funds to pay taxes or other advances, and the necessary sums had been supplied by Zetterlund and Halland, so that at the time involved Elsinore owed Zetterlund and Halland a total of at least $254,425.94 (Nelson's Exhibit 9, par. 4, not printed). Halland owned 24 lots which were interspersed in the large tract in Hollywood, Florida, owned by Elsinore (R. 83).[2] Zetterlund individually owned 99 lots also interspersed in the same large tract (R. 83).

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[1] Neither corporation had ever qualified in California nor been present in that state in any other manner.

[2] Halland also owned a hotel in Miami Beach, Florida, not here involved (P. App. 3).

Throughout the entire transaction involved in the controversy, the fact that part of the property was owned by Halland and another part by Zetterlund, individually, and Elsinore's debt to Zetterlund and Halland, were completely ignored.

As respondents have acknowledged, the property is worth "several millions of dollars" (R. 910). Four of the lots involved, representing a minor fraction of the so-called ocean-front portion of the property, were sold to the Slutskys in 1946 for $192,000.00 (R. 93, 152; Beverly's Exhibits 11, 25, 22, 23, not printed). The ocean-front portion itself (Beverly's Exhibit 11, not printed) constituted only about 20% of the entire tract. If this sale is used as a basis of valuation, the aggregate 1946 value of the ocean-front portion alone was $2,600,000.00. This figure does not include any value for the remaining 80% of the tract.

On April 10, 1945, the respondent, Friedland, made a written offer to Elsinore to purchase the Hollywood, Florida, tract (in fact, owned by Elsinore, Halland and Zetterlund individually) for $650,000 (P. App. 100-101). Between April 13 and April 20, 1945, this proposal was accepted in writing on behalf of Zetterlund by Dora Miller, individually and also acting under a power of attorney, and by Harold M. Davidson, a California attorney, purporting to act under Zetterlund's direct authorization (P. App. 101).

On May 17, 1945, Dora Miller filed a petition in the Superior Court in California in which she sought an adjudication that Zetterlund was incompetent and her appointment as guardian over his person and estate (P. App. 1-8). In the same petition she sought authority as guardian to dispose of the real estate owned by the two Florida corporations (P. App. 2-5). Notice of the proceeding was served on Zetterlund by Davidson (P. App. 10), who was counsel of record for Miller. A copy of the petition was not served upon Zetterlund (P. App. 10). The citation thus served on Zetterlund took no notice of petitioner's application to dispose of the Florida property.

The petition recited that Zetterlund "has no relatives in the State of California and no living relatives of the second degree" (P. App. 2) although Zetterlund then had a nephew, Ernfrid E. Rensta, residing in California (P. App. 34, 64) and had a total of nineteen nephews and nieces, all relatives of the second degree (P. App. 64-65). Respondents' answer has admitted that this averment of the petition was false (R. 180). The petition, which was misleading in a number of additional material respects,[1] prayed that Dora Miller be appointed guardian and that she or her attorney as her proxy be authorized to go to Florida to vote the stock "and to sign any and all papers necessary to complete the sale of said assets" (P. App. 5).

On May 23, ~~1953~~ 1945, the California court issued an order (P. App. 11-13), reciting a hearing and that Zetterlund was unable to attend, which appointed Dora Miller guardian as she had sought, found that there were "negotiations" for the sale of real property owned by the two corporations

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[1] It failed to disclose (i) the Friedland offer of purchase dated April 10, 1945 (P. App. 100) or its acceptance (P. App. 101-106); (ii) that the property situated in Florida, the subject matter of the Friedland offer, was owned in part by Zetterlund individually (*supra*, p. 8); (iii) that the stock certificates, owned by Zetterlund and his Florida corporations were physically situated in Florida and were not in California, nor in petitioner's possession or control (*supra*, p. 8); (iv) that Zetterlund was domiciled in Florida and had been a citizen of Florida for over fifty years, and that all of his property was situated in Florida except the clothes he was wearing (*supra*, pp. 7-8); (v) that the lands described in Friedland's offer were involved in Florida litigation, to which Zetterlund was a party, and that a sale of the land required as a prerequisite a disposition of the Florida litigation (Nelson's Exhibit 8, not printed) and (vi) that Elsinore was indebted to Zetterlund and Halland in the amount of $254,425.94, for advances (*supra*, p. 8).

(P. App. 12) and authorized Dora Miller or her attorney to proceed to Florida to participate in meetings of the corporation as a director or stockholder to vote the stock, to perform "any other acts necessary to complete the sale of said real property; and to perform any other duties in connection with the business of both corporations that Olof Zetterlund himself might and could perform if he were present in person" (P. App. 12). A reading of the petition clearly demonstrates that the sole purpose of the incompetency proceeding was to enable the guardian to effect in Florida the sale of real estate owned and controlled by Zetterlund in that state and which represented the major part of his assets.

Thereupon Davidson went to Florida and, assuming to exercise all the powers which Zetterlund might have exercised if personally present, voted the stock of Elsinore and Halland, both Florida corporations, at stockholders' and directors' meetings held in Florida, both for the election of directors and in favor of resolutions approving the proposed sale of the real property located in Florida to respondents (Nelson's Exhibits 8, 16, 46 and 47, not printed). He also authorized and directed the attorney representing Zetterlund in a suit brought against Zetterlund by the minority stockholders of Elsinore in the Circuit Court of Broward County, Florida, to settle that litigation by entering into a stipulation which involved granting the minority stockholders a mortgage for $170,000 on the real property owned by that corporation, by Halland and by Zetterlund individually (R. 89; see, R. 150-151) and waived a claim of Zetterlund individually against Elsinore in the amount of $254,425.94, for which Zetterlund had an equitable lien on the land (Nelson's Exhibit 9, par. 4, not printed), in return for the transfer to Elsinore of the remaining outstanding stock of that corporation, so that Zetterlund became the sole owner of the outstanding stock of both corporations (Nelson's Exhibits 9 and 4-B, not printed).

Thereupon Davidson negotiated and signed with the respondent Friedland a contract for the sale of the property, which by description included lands owned by Elsinore, Halland and Zetterlund, individually, for a total purchase price of $700,000. The contract was made expressly subject to the approval of the California court (P. App. 112):

> "This agreement is entered into subject to the approval of the Superior Court of Los Angeles County, State of California, Case No. 243553, petition for approval to be presented to the Court on or before June 22, 1945."

It was not signed by either of the corporations by any duly authorized officer; instead, the execution was in the following unusual form (P. App. 112):

> "Elsinore Beach Corporation, by Harold M. Davidson, Proxy for Dora Miller, Guardian of the Person and Estate of Olof Zetterlund, an Incompetent Person; Samuel Friedland (L. S.)"

The price of $700,000 was adjudged "grossly inadequate" by the trial court on the first trial (R. 216) and this finding has never been disturbed, but was instead expressly reaffirmed by the Supreme Court of Florida in its last opinion (68 So. 2nd at p. 612; R. 923).

The guardian did not comply with the condition precedent prescribed in the contract, for she did not submit the contract to the California court for approval. In an attempt to create an appearance of compliance, she filed with that court a so-called "Petition for Approval of Sale of Personal Property" (P. App. 16-18) in which she sought approval of certain acts described in her petition. The acts described in the petition did not include Davidson's execution of the contract as proxy for the guardian, nor his direction of a mortgage on the entire tract, including Zetterlund's 99 lots, nor his waiver, on Zetterlund's behalf, of a claim against Elsinore for $254,425.94. No copy of the contract of sale or of the settlement stipulation was submitted to the California court.

Nothing contained in the guardian's petition justified her characterization of her application as one for the approval of the sale of "personal property". What was sold was realty, and the petition for the appointment of a guardian, Davidson's signature of the contract and his other activities in Florida, and the petition for approval, all establish that Dora Miller and Davidson disregarded the corporate entities of Elsinore and Halland and dealt with the real property involved as if it were all directly owned by Zetterlund. Thus in both petitions the guardian calculated the amount to be paid into her hands as guardian by subtracting from the contract price the sum due the minority stockholders,—and, in addition, in the second petition, the sum due the broker (P. App. 3, 18). She completely ignored the federal capital gains tax Elsinore would be required to pay on the transaction, amounting to at least $100,000. (R. 364) and also ignored Elsinore's debt to Zetterlund and Halland of $254,425.94, of which Davidson was aware because it was recited in the settlement stipulation in the minority stockholders' suit.

The order of the California court entered upon this petition, without any independent appraisal of the property or any independent testimony showing why it was required to be sold, did not directly or by implication approve any sale of personal property, did not approve the contract of June 9, 1945, and did not approve the sale of real property. The order entered merely approved the acts of the guardian by her proxy "in voting the stock held by Olof Zetterlund in the Elsinore Beach Corporation" (P. App. 18-19).

On this record the trial court, on February 18, 1949, found that:

> "The agreement of June 9, 1945, was not approved by the Superior Court of California, notwithstanding the inaccurate and misleading Petition for Approval and the order of July 6, 1945" (R. 218).

During the period of these transactions, Zetterlund was wholly incompetent and his approaching death was recognized by all. The Chancellor wrote in his opinion on the second trial, as follows:

> "The buyer (Samuel Friedland—later Beverly Beach Properties, Inc.), was extremely anxious to secure a bargain—before it slipped from its hands—or perhaps placed in other hands through the death of Zetterlund. Toward the last, Rasco, Burdet, Davidson and Miller were anxious to close some sort of deal—almost any sort of a deal that would produce some cash—before Zetterlund died and someone else entered the picture in their stead, for they saw some ready easy cash they might obtain for themselves through the seller, and out of the first purchase moneys" (R. 615-616).[1]

Accordingly, the parties attempted in early August, 1945, to close the transaction so far as they were able. On August 9 they entered into a second contract (P. App. 112) in which they agreed that the transaction evidenced by the first contract of June 9, 1945, would be submitted to a Florida court for approval and all papers and funds escrowed until that approval was obtained. Thereafter a portion of the purchase price was paid to the minority stockholders (Nelson's Exhibits 9-A and 9-B, not printed) and the mortgage, promissory note and balance of funds placed in escrow. On August 13, 1945, the purchaser obtained and recorded a warranty deed to the CORPORATE property (Nelson's Exhibits 14 and 17, not printed). The deeds were obtained without the release of any funds whatsoever to the vendor.

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[1] Davidson and Miller anticipated and subsequently petitioned the California court for $100,000.00 as allowances in the incompetency proceeding (P. App. 31). That court did not, however, allow more than a small portion of that sum.

Zetterlund died on August 21, 1945 (P. App. 44). His death rendered it impossible to fulfill the conditions of the escrow contract of August 9, 1945, and although the time for closing was several times extended, the transaction was never fully consummated (P. App. 118-124).

After Zetterlund's death Dora Miller probated in California a codicil to Zetterlund's will appointing her executrix (P. App. 83-84) which was executed on August 3, 1945, three months after she had been appointed his guardian (P. App. 79-89). Thereafter, Zetterlund's assets being located in Florida, the State of California, by its Controller (P. App. 66-68), and Dora Miller and Davidson, (P. App. 51-53), submitting themselves to the jurisdiction of the Florida court, sought an adjudication in Florida that Zetterlund was domiciled in California (P. App. 39-100). After a full trial in which Dora Miller, Davidson and representatives of the State of California personally appeared and participated, the Florida court held that Zetterlund was domiciled in Florida (P. App. 74-76). The State of California, Dora Miller and Davidson prosecuted appeals to the intermediate Appellate Court in Florida and upon affirmance there, prosecuted appeals to the Supreme Court of Florida, which affirmed the result below and determined conclusively that Zetterlund was domiciled in Florida and his assets were located there (*Miller* v. *Nelson*, 35 So. 2d 288, April 30, 1948, printed as Appendix B, *infra*, pp. 4a-15a).

While those appellate proceedings were still pending, and within a few months after domiciliary letters testamentary were issued to him, Samuel Nelson instituted this suit to invalidate the transaction evidenced by the guardian's contract of June 9, 1945 (R. 44).

The final ruling of the Florida court dismissing the complaint holds that assets of an incompetent Florida domiciliary may be sold by a guardian appointed on his behalf in California during a temporary sojourn in that state, through the device of obtaining approval from the California court for the voting of the stock of a wholly owned corporation having title to the assets, where (1) the corporation, all of its assets, consisting entirely of realty, and the stock certificates were at all times located in Florida; (2) in the California incompetency proceeding no notice was served on anyone except notice to the incompetent served by the attorney for the petitioner for guardianship, and all of the incompetent's relatives were wrongfully excluded by the false statement that there were no such relatives; (3) no guardian *ad litem* or other impartial person was appointed by the court to protect the interests of the incompetent; and (4) the consummation of the transaction required the guardian to perform numerous acts within the State of Florida, in excess of her statutory powers, including voting at stockholders' and directors' meetings, settling a law suit, giving a mortgage and signing a contract of sale.

The ruling below violated the due process clause of the Fourteenth Amendment and raises important federal questions of significant bearing on the property of the hundreds of thousands of incompetents in the various States in the United States.

Questions Presented.

1. Is it a denial of due process for a State court to recognize on the ground of comity as well as full faith and credit a judicial proceeding in another State which itself was invalid for lack of due process?

2. Does a State have power under the Fourteenth Amendment to authorize a guardian of the property of a non-domiciliary incompetent to sell real estate located in another State by means of voting of the stock of a foreign corporation owning the real estate, where the stock certificates were located in said foreign State?

3. Is it a denial of due process to recognize a foreign judicial proceeding which is subject to collateral attack in the foreign State on the grounds that the notice required by the foreign statute was not given and the foreign court exceeded its statutory jurisdiction?

4. If a State has power to authorize a guardian to exercise the powers set forth in question "2" above, may it do so consistently with procedural due process by virtue of a proceeding where no notice was given other than to the incompetent himself, and where there was no proceeding in the foreign State?

5. Is it a denial of due process for a State court to dismiss a complaint on the ground that the issues are determined by a foreign judicial proceeding without remanding for a further hearing where the foreign proceeding lacks due process unless an incompetent was

domiciled in the foreign State, and where the issue of domicile was not litigated in the foreign State, because the proceeding there was *ex parte*, and not litigated in the forum because the respondents' pleading admitted that the issue was controlled by a prior judgment of the highest court of the forum to the effect that the incompetent was all times domiciled in the forum?

Specifications of Error.

Petitioners specify as error the rulings of the Supreme Court of Florida on the aforesaid Questions Presented and also the following erroneous rulings which were basic to that court's disposition of the federal questions involved, and petitioners will urge these Specifications of Error if a Writ of Certiorari is granted.

The Court below erred:

1. in holding that the California court had power to approve a contract for the sale of real property which included real property owned in Florida by Olof Zetterlund individually;

2. in holding that the California guardian, acting through her proxy in Florida, did nothing in Florida except vote stock;

3. in holding that the California order was dispositive of the cause where the contract of sale which was conditioned on the approval of the California court was never approved by that court; and

4. in refusing to hold that the California guardian committed a fraud on the California court.

Reasons for Granting Writ.

I.

This case presents a weighty constitutional question which was on the periphery of the Court's recent decision in *May* v. *Anderson,* 345 U. S. 528, namely: Is it a denial of due process for a state court to recognize, on the ground of comity as well as full faith and credit a foreign judicial proceeding which is itself offensive to due process?

In *May* v. *Anderson* the Court held that Ohio was not required to accord full faith and credit to a Wisconsin decree awarding custody of children to a father where the Wisconsin proceeding had been undertaken without personal service on the mother. The case, therefore, stands for the proposition that a federal question is presented by an erroneous decision in a state court that it is required to recognize a foreign judicial proceeding as a matter of full faith and credit.

The issue of whether a state court may, as a matter of comity, without offending due process, recognize a foreign judicial proceeding, which itself offends due process—an issue which this Court was not required to pass upon in *May* v. *Anderson,*—is squarely presented in the instant case.

If the determination of the Supreme Court of Florida is not erroneous and not subject to review, then, for example, the courts of Florida may recognize a Nevada divorce decree obtained by the wife without personal service or appearance by the husband, without ever ruling on the husband's contention that the Nevada decree is not entitled to full faith and credit and despite his proof that it is not so entitled. Florida could simply say that the Nevada decree is recognized as a matter of comity.

We shall show in the succeeding pages of this petition that the California proceeding was in excess of the jurisdiction of the California court, as delimited by the Fourteenth Amendment, was undertaken without the notice required by the Fourteenth Amendment, and was subject to collateral attack in California because of violation of the California statutes relating to the jurisdiction of the California court and the notice required to maintain the proceeding in that court.

II.

There is presented by the record in this case the fundamental undecided question of the substantive jurisdiction of a state court over assets, located in another state, of a non-domiciliary incompetent person. This Court has recently undertaken to find solutions for the pressing issues of the extraterritorial effect of state divorce,[1] custody[2] and probate[3] decrees. The equally significant problem of the extraterritorial effect of a decree appointing a guardian over the estate of an incompetent is presented by this petition.

What is the source of a state's power to appoint a guardian over the property of an incompetent? Does any state which finds a non-domiciliary incompetent within its borders possess the power to exercise dominion over his property located outside the state? Or must the asset over which dominion is asserted be itself within the reach of the state?

This Court has never rendered a clear answer to these questions. In *Hoyt* v. *Sprague*, 103 U. S. 613, the Court, by quoting with approval from Story, Conflict of Laws, indicated that only the guardian appointed in the state in which personal property is located may exercise dominion over it:

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[1] See, *Williams* v. *North Carolina*, 325 U. S. 226; *Sherrer* v. *Sherrer*, 334 U. S. 343.

[2] *May* v. *Anderson*, 345 U. S. 528.

[3] *Riley* v. *New York Trust Co.*, 315 U. S. 343.

> "'* * * The rights and powers of guardians are considered as strictly local; and not as entitling them to exercise any authority over the person or personal property of their wards in other States, upon the same general reasoning and policy which have circumscribed the rights and authorities of executors and administrators.' Story, Confl. L., secs. 499, 504, 504a; * * *" (p. 631).

A like indication is found in *Chaloner* v. *Sherman,* 242 U. S. 455, where the Court confirmed the authority of a New York guardian over the person and property of an incompetent, over an objection that the incompetent was not domiciled in that State but in Virginia, saying with reference to the New York court:

> "That court had jurisdiction because the plaintiff and his property were in New York; and the essentials of due process of law were met" (p. 462).

In the present case California asserted jurisdiction over assets which were not in any sense subject to the physical power of that State. California could not seize the stock certificates, for they were located in Florida; it could not compel Elsinore to recognize the transfer of the certificates, for that corporation was a Florida corporation; and it could not seize the assets of the corporation, because those too were located solely in Florida. The Florida court nevertheless held that these assets were present in California, and justified the California court's exercise of jurisdiction over them, by invoking the fiction of mobilia sequuntur personam (68 So. 2d at p. 609; R.

918), saying that the assets were present in California "because we hold to the rule that intangible personal property in contemplation of law, accompanies the person of the owner" (68 So. 2d at p. 611; R. 923). It thus held that California had jurisdiction over these assets solely because of Zetterlund's temporary presence in the State.

The fiction that the property follows the owner is of limited application and may not be invoked to deny constitutional rights (*Freeman* v. *Hewit,* 329 U. S. 249, 258). That fiction is most frequently invoked in connection with problems of multi-state taxation of intangibles (see, *Miller Brothers Company* v. *State of Maryland,* decided April 5, 1954, U. S. , footnotes 9 and 13); indeed, the two cases upon which the Supreme Court of Florida relied were tax cases.[1] In these tax cases and generally in the treatises on the subject, it is held that three jurisdictions may possibly exercise jurisdiction over stock, namely, the state of incorporation, the state where the certificate is located, and the domicile of the owner. The favored view is that jurisdiction rests with one of the first two (3 Beale, Treatise on the Conflict of Laws [1935] 1499, Sec. 477.1, et seq.; Goodrich, Conflict of Laws, 545-548; Restatement of Conflicts, Sec. 104). California did not qualify under any of these standards. Moreover, in their answer, respondents pleaded that the situs of the stock followed Zetterlund to "the place of his domicile" (R. 180). Since subsequent to that pleading the Supreme Court of Florida found in the domiciliary probate proceeding that Zetterlund was domiciled in Florida, which finding was accepted in this case (*infra,* p. 37) it is apparent that even the fiction of mobilia sequuntur personam, incorporated in respondents' answer, would not aid their case.

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[1] *State ex rel. U. S. Sugar Corp.* v. *Gay* (Fla.), 46 So. 2d 165; *State ex rel. Seaboard Air Line Railroad* v. *Gay,* 160 Fla. 445, 35 So. 2d 403.

The irrelevancy of the fiction urged to support the Florida court's opinion is demonstrated by consideration of the real issue, that is, whether the California guardianship could reach Florida stock certificates located in Florida, and owned by a Florida domiciliary. The definitive authority on this point is *Riley* v. *New York Trust Co.,* 315 U. S. 343. In a Georgia probate proceeding in which all the beneficiaries and heirs at law of the testatrix were personally served, it was expressly held that the testatrix was a Georgia domiciliary. The Georgia executors, having in their possession stock in a Delaware corporation owned by the testatrix, sought to compel the Delaware corporation to transfer the certificates in accordance with Georgia law. This the Delaware corporation refused to do, apparently because of an objection filed by a New York temporary administrator, appointed under New York law and representing creditors as well as beneficiaries in that state. Thereupon, the Delaware corporation interpleaded the Georgia executors and the New York administrator in the Delaware state court. The Delaware court held itself not bound by the Georgia decree and adjudicated that the testatrix was a New York domiciliary. *In this Court it was agreed by both parties and the Court assumed that the situs of the stock was in Delaware, the State of incorporation, despite the fact that the certificates themselves were in Georgia* (*id.,* pp. 345-346). The Supreme Court affirmed the Delaware state court on the ground that the Georgia proceeding was in rem and could not bind the New York temporary administrator with respect to assets not located in Georgia, because he was not a party or privy to a party in that proceeding. The Court said:

> "While the Georgia judgment is to have the same faith and credit in Delaware as it does in Georgia, that requirement does not give the Georgia judg-

> ment extraterritorial effect upon assets in other states. So far as the assets in Georgia are concerned the Georgia judgment of probate is in rem; so far as it affects personalty beyond the state, it is in personam and can bind only parties thereto or their privies * * *. Phrased somewhat differently, if the effect of a probate decree in Georgia in personam was to bar a stranger to the decree from later asserting his rights, such a holding would deny procedural due process" (*id.*, pp. 353-354).

We have seen that the Florida Court rested on the ground that the assets were present in California because Zetterlund was present there. Plainly it conceived of the proceeding as in personam, for it authorized the guardian or her proxy to go to Florida and to perform all acts "that Olof Zetterlund himself might and could perform if he were present in person" (P. App. 12). But was the proceeding *as to Zetterlund's property* an in personam one at all? In *Riley,* the Georgia judgment was in personam as to foreign assets, and bound the parties and their privies, because such parties had a real opportunity to litigate their claims. Similarly, in this case, any relative of Zetterlund who might have appeared in California and contested the California guardianship would have been bound by the California decree. But it would be absurd to construe the *Riley* holding to import that anyone claiming through the *decedent* is foreclosed as to foreign assets by such a probate proceeding, on the ground that the proceeding is *in personam as to the decedent,* and regardless of whether or not such claimant was personally served or appeared. The law is to the contrary (*Riley* v. *New York Trust Co., supra; Baker* v. *Baker, Eccles & Co.,* 242 U. S. 394, 404). Yet an incompetent had no more opportunity to defend than does a decedent. Can a proceeding by which a state assumes jurisdiction of assets outside the state and authorizes the guardian to act outside the state be *in personam as to him* so as to bind all who claim through him? Is the California guardianship of Zetterlund's estate in personam as to Zetterlund, so as to foreclose his devisees and distributees from laying claim to assets which, as the *Riley* case holds, could not be reached except by a decree in personam against their predecessor in interest?[1]

That is the core of this case. If the proceeding is in rem, it cannot be imagined that Zetterlund was a party to it so as to foreclose his privies from laying claim to assets outside the state. Certainly an incompetent has no more opportunity to defend and is no more a party to such an in rem proceeding that he might be to any other proceeding in rem in that state of which he received notice. Likewise, if the proceeding is in rem, it is clear under the *Riley* case that California may not exercise jurisdiction over stock certificates of a Florida corporation located in Florida. The farthest this Court has ever gone is to hold that the state of domicile of the decedent may, in an in rem proceeding for the assessment of death taxes, assess a tax on the basis of stock certificates owned by the decedent, but located outside the state (*Curry* v. *McCanless*, 307 U. S. 357). But so far as we know, it has never held or even suggested that the state of domicile, much less a non-domiciliary state, may, in an in rem proceeding, exercise the same jurisdiction over foreign stock that the owner could if present within the state, much less authorize the custodian of the rem to act outside the state. In any event, a guardianship proceeding is closer to a probate one than it is to the assessment of death taxes.

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[1] It is to be noted that the sale here sought to be rescinded is still executory (*supra*, p. 15).

Certainly traditional notions of fair procedure are offended by the assertion that California may assert such *in personam* jurisdiction, and so are traditional notions of the limited authority of a guardian. It is a commonplace that a guardian has no authority outside the State of his appointment:

> "A guardian's authority to act is confined to the state that appoints him. He cannot act in a foreign state without being appointed in the foreign state." 3 Beale, Treatise on the Conflict of Laws (1935) 1592, Sec. 583A.1.
>
> "Whatever Day's powers may have been in California, he had, as a foreign guardian of a non-resident [i.e., a California resident] no powers in this Commonwealth over the property of his ward by virtue of his foreign appointment." *McGuigan Estate,* 349 Pa. 581, 591; 37 A. 2d 717.
>
> "Bailey got no authority over the assets in New York by his letters in Oklahoma." *Barnett* v. *Equitable Trust Co.,* 34 F. 2d 916, 919.

California herself recognizes that this is the common law rule[1] and has incorporated it in her Code of Civil Procedure[2].

Up to the date of its last opinion the Florida Supreme Court, in accord with these authorities, held that it was "too academic to require supporting authorities" that the California guardian could not act in Florida without an ancillary appointment (47 So. 2d at p. 313; R. 509). On rehearing, although no new evidence was cited nor new contention made, the Court held, on the authority of eight cases and one text (68 So. 2d at p. 609; R. 919), that the guardian was clearly empowered to exercise dominion over stock located in Florida for the purpose of disposing of real estate in Florida.

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[1] *Lewis* v. *Adams,* 70 Cal. 243, 11 Pac. 833.

[2] California Code of Civil Procedure, Section 1913: "The effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced here by an action or special proceeding, and except, also, that the authority of a guardian or committee, or of an executor or administrator, does not extend beyond the jurisdiction of the government under which he was invested with his authority."

Nothing in those cases upholds that conclusion. None of them touch on the precise issue here, namely, whether a non-domiciliary guardian may vote stock in a foreign corporation where the certificates are located outside the state of appointment, much less on whether that stock may be voted by such a guardian so as to dispose of all of the assets of the corporation. In the only case among those cited by the court in which the facts of both domicile and location of the certificates appears, *American & British Mfg. Co.,*[1] it was held that stock owned by a corporation which was in the hands of receivers should, in the interests of creditors, be voted by the domiciliary New Jersey receiver and not the New York ancillary receiver, but since the New York receiver had possession of the certificates a proxy was required in order to permit the New Jersey receiver to vote the stock. The procedure illustrated in that case, whereby the New Jersey receiver requested the New York court to order the New York receiver to execute the proxy, exposes the error committed in this case, where no such permission was sought. Four of the other cases (*Gow,*[2] *Cape May,*[3]

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[1] *American & British Mfg. Co.* v. *International P. Co.,* 173 App. Div. 319, 159 N. Y. Supp. 582.

[2] *Gow* v. *Consolidated Coppermines Corporation,* 19 Del. Ch. 172, 165 Atl. 136.

[3] *In re Election of Cape May, etc. Nav. Co.,* 51 N. J. L. 78, 16 Atl. 191.

Elevator Supplies Co.[1] *and Investment Associates, Inc.*[2]) involve contested elections of directors, and would support the proposition that a domiciliary fiduciary having possession of the certificates may vote stock in a foreign corporation for the election of directors. There is no suggestion in any one of them, however, that a guardian or executor may exercise dominion over stock where the appointment is not in the state of domicile and when the certificates are outside the state of appointment. The other three cases (*Kane,*[3] *Griffith*[4] and *Noonan*[5]) are entirely irrelevant; indeed, in *Noonan* it is affirmed that an executor has no extraterritorial powers.[6] The citation from *Fletcher*[7] is equally inapposite since it suggests that an executor may vote stock to which he has title. In our case it is clear that the California guardian did not have title to the stock (*Katz* v. *Greeninger,* 96 Cal. App. 2d 245; 215 P. 2d 121).

Ours is a mobile population, and we have an unfortunately large number of incompetents. The marking out of the constitutional limits of the jurisdiction of state courts over the property of incompetents who are found within their borders is of prime social importance, and deserves the attention of this Court.

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[1] *Elevator Supplies Co.* v. *Wylde,* 106 N. J. Eq. 163, 150 Atl. 347.

[2] *Investment Associates, Inc.* v. *Standard Power & Light Corporation,* 48 A. 2d 501.

[3] *Kane* v. *Paul,* 14 Pet. (U. S.) 33 (involving rights under an Act of Congress relating to the District of Columbia).

[4] *Griffith* v. *Frazier,* 8 Cranch (U. S.) 9 (involving rival letters issued in the same state).

[5] *Noonan* v. *Bradley,* 9 Wall. (U. S.) 394 (holding that an administrator has no power as such to sue in a foreign state).

[6] *Id.*, p. 399.

[7] *Fletcher Cyclopedia Corporations,* Permanent Edition, paragraph 2037.

III.

The California order was in plain violation of the jurisdictional requirements and limitations of the California court as set forth in the California statutes. It was therefore subject to collateral attack in California and the Florida court erred in recognizing it as a matter of full faith and credit, and denied petitioner due process in recognizing it as a matter of comity.

Full faith and credit only requires that the forum accord a foreign judgment the same effect as it would be accorded in the state which rendered it, and this Court will make its own inquiry into the validity and effect of the foreign judgment in the foreign state, and is not bound by the forum's resolution of those issues, express or implied (*Adam* v. *Saenger,* 303 U. S. 59, 64).

The California proceedings did not comply with the notice requirements of the California statute and exceeded the statutory jurisdiction of the California court, and were, therefore, subject to collateral attack in that state.

As to notice, the relevant sections are sections 1570, 1530(a) and 1200 of the California Probate Code (reprinted in Appendix A, *infra,* pp. 1a-3a). Under Section 1570, the notice by which the California incompetency proceeding was instituted was invalid. That Section requires that "the court or judge must cause notice to be given to all persons interested, in such manner as deemed reasonable." Since the petition falsely stated there were no relatives of the incompetent in California, and that the incompetent had no relatives of the second degree, no notice was given to anyone except the alleged incompetent. In point of fact, Zetterlund had nineteen nieces and nephews, one of whom was located in California. Indeed, respondents admitted the existence of a California relative in their answer (R. 180). It follows, therefore, that there was a clear violation of the statutory requirement. It is likewise apparent that the proceeding did not comply with Section 1530(a), which governs how a California guardian may compromise a litigation. The so-called "Petition for Approval of Sale of Personal Property" filed by the California guardian, stated that Davidson had "settled and compromised a law suit pending in the Circuit Court in Florida between the members of the Elsinore Beach Corporation" (P. App. 16). Section 1530(a) provides that a guardian may compromise such a lawsuit on petition if notice is given "in the manner required by Section 1200 of this code." Section 1200 requires that notice of the petition shall be given by posting "at the courthouse of the county where the proceedings are pending, at least 10 days before the day of hearing" and further provides that "Proof of the giving of notice must be made at the hearing; * * *." Although the petition could not be approved without this notice, the record shows that no notice was posted (P. App. 16-19).

As to the statutory jurisdiction of the California court, the California Probate Code provides (Sec. 1570) that the Court may appoint a guardian for a non-resident "who has estate within the county" and that such guardianship shall extend "to all the estate of the ward *within this state,*" and Section 1571 provides that the powers of such guardian shall extend to the "estate of the ward *within this state*" and that he shall be liable to account for "such estate as comes into his hands *in this state*" (emphasis supplied). As the Elsinore stock was not in California and California could exercise no jurisdiction over it, the California order was in excess of the statutory jurisdiction of the California court.

This conclusion is not affected by Section 1517 of the Probate Code, relied upon by the Florida court (68 So. 2d at p. 609; R. 918), for that section empowers a guardian to vote stock in domestic or foreign corporations if the stock is "held in the estate". Since by the terms of Sections 1570 and 1571 a guardian for a non-domiciliary ward does not *hold* in the estate stock not located in the state, he cannot vote that stock.

The California order was subject to collateral attack in California because, under the law of California, an order is subject to collateral attack if not supported by the notice required by California statute or if the court has asserted jurisdiction over a subject matter not entrusted to it by statute. In *McGee* v. *Hayes*, 127 Cal. 336, 59 Pac. 767, the appointment of a guardian was held void, and subject to collateral attack, because, although notice of the proceeding was served on the alleged incompetent, it appeared from the record that that notice had not been served five or more days before the hearing as required by statute. In *Snyder* v. *Superior Court*, 206 Cal. 346, 274 Pac. 337, where the alleged incompetent had actual notice of and appeared at the hearing, having been served with a copy of the petition although not with the statutory notice, the court held similarly that the appointment was void and subject to collateral attack:

> "The giving of this notice is jurisdictional, and without it the court has no power to adjudicate the question of the incompetency of a person brought before it charged with being incompetent, or to appoint a guardian of the estate of such person" (206 Cal. at p. 349).

Likewise, California acknowledges the usual rule that a judgment is subject to collateral attack where a court asserts jurisdiction over a subject matter not entrusted to it by statute (15 Cal. Juris 52, Section 141).

The California order being subject to collateral attack in that state because it was not supported by the notice required by the California statute and was in excess of the jurisdiction conferred by the California statute upon the California court, it could not be recognized in Florida consistently with due process.

IV.

Wholly apart from any question of non-compliance with the statutory law of California, the procedure followed was fatally deficient as a matter of due process.

The only notice served in the California guardianship proceeding was notice served on Zetterlund by the attorney for Dora Miller, the petitioner for guardianship. Even were it to be assumed, *arguendo,* that the California court could authorize the guardian's transactions shown by the Record, it is submitted that it was a violation of procedural due process to exercise that jurisdiction in the manner adopted in the California incompetency proceeding.

Certainly it offends common notions of fairness to suppose that a state in which an incompetent is sojourning but in which he is not domiciled may entrust his property, including property not subject to the physical power of the state of appointment, to another person who is not related to him at hearings at which no one represents him, without notice actual or constructive to any relative of the incompetent or to any one else, but merely on the basis of notice to the incompetent served by the attorney for the interested petitioner. It is difficult to see how it may be said that in this situation there is an opportunity to defend.

True, if the notice is ineffective because the alleged incompetent *is* incompentent, perhaps there ought to be a guardian appointed, but it does not follow that the petitioner for guardianship is the proper person to exercise dominion over the incompetent's property. There is no decision of this Court justifying the procedure which was followed in the California incompetency proceeding.

The only cases in which this Court has considered the adequacy of notice in incompetency proceedings are *Simon* v. *Craft*, 182 U. S. 427, and *Chaloner* v. *Sherman*, 242 U. S. 455. In *Simon* v. *Craft*, the issue was whether the incompetency proceedings were valid where the Sheriff did not bring the incompetent to the hearing. In that case a guardian *ad litem* had been appointed for the incompetent (*id.*, p. 436) and the incompetent was a domiciliary of the state (*id.*, p. 428). The Court held that the objection was not good, laying down as the test that there must be an adequate opportunity to defend:

> "The essential elements of due process of law are notice and opportunity to defend. In determining whether such rights were denied we are governed by the substance of things, and not by mere form" (p. 436).

In *Chaloner* v. *Sherman*, the principal issue was whether the incompetency proceedings were invalid because the incompetent did not appear at the hearing. In that case the petitioners for guardianship were two brothers of the incompetent (Record in that case, p. 68), and the petition set forth the names and residences of the next of kin and heirs (*id.*, pp. 68-69) as required by the statute (242 U. S. at p. 460). In these circumstances the Court stated:

> "As the plaintiff [the incompetent] had notice and opportunity to be heard at each stage of these

> proceedings, the essential elements of due process of law were fully met, and the court had jurisdiction to enter that order" (p. 461).

In the instant case no guardian *ad litem* was appointed, the incompetent was not a domiciliary of the State and no relative had notice, actual or constructive, of the pendency of the proceeding. The petitioner was his housekeeper with whom he was traveling for reasons of his health.

The question of whether the broad statement in the *Chaloner* opinion that notice to the incompetent sufficed is to be restricted to some degree by the circumstances of that case, or whether notice to the incompetent is the sole requirement of procedural due process under any circumstances, is an important question in the administration of the property of incompetents.

Furthermore, the Florida court denied petitioners the procedural protection of a Florida proceeding, to which they were entitled before the Florida assets could be sold, by erroneously invoking the doctrine of comity.

State courts ordinarily view with favor an application of a foreign guardian either seeking appointment as an ancillary guardian in the forum or seeking an order of authorization in the forum, in order that he may exercise dominion over assets which are located in the forum. They do this as a matter of comity. Such practice does not import, however, that a guardian appointed in another state may, *without the approval of the forum,* invade the forum and exercise dominion over assets located there. Although we have made diligent search we have found no authority which would approve such a procedure. On the contrary, the rule of comity means only that the forum ordinarily will extend recognition to the foreign guardian *upon appli-*

cation for such authorization. As stated in *Warren* v. *Hofer*, 13 Ind. 167, 169:

> "Though the power of a guardian, like an administrator, is local to the state in which he received his appointment, yet, he is competent to receive the property, or the custody of the ward, *when placed in his hands by the Courts of another state,* to be taken to the state where either or both belong, and in which he receives his appointment." (emphasis supplied.)

Likewise in *Banning* v. *Gottshall,* 62 Ohio St. 210, 56 N. E. 1030, the Court said:

> "* * * In the absence of any statute on the subject, it seems to have been usual and *necessary to resort to ancillary guardianship in the state where the property was situated, or make application to a court having chancery powers for a proper order authorizing the foreign guardian to exercise control over the personal estate of the ward so situated,* or remove it from the state; and in such cases the courts have the discretionary power to make such order as should be deemed for the best interest of the ward." (56 N. E. at p. 1032; emphasis supplied.)

Petitioners were entitled to the protection of a judicial proceeding in Florida before the Florida assets could be disposed of. The Florida court, by misconceiving the doctrine of comity, sanctioned the denial of this protection to the petitioners.

V.

The Florida Supreme Court did not purport in its last opinion to upset its determination in the domiciliary probate proceeding that Zetterlund was domiciled in Florida.

It rested its decision on the ground that California had jurisdiction over Zetterlund's person and therefore was entitled to authorize the guardian to vote the stock, which it apparently considered to be the guardian's only activity. While the court stated at one point that Zetterlund "was still residing in California" (68 So. 2d at p. 608; R. 916), in several other places it referred to Zetterlund as "in" California (twice at 68 So. 2d. p. 608; R. 917) and in discussing the law of California and Florida generally, it adverted to their power over incompetent persons "within the borders of such States whether residing therein permanently or temporarily" and spoke of the safeguards which those States should and do "throw * * * around incompetents within their borders" (68 So. 2d at p. 610; R. 920).

The Florida court thus held that the California incompetency proceeding was entitled to extraterritorial recognition even though Zetterlund was not a California domiciliary. However, if its opinion can be construed as overruling its previous determination, and resting on the assumption that Zetterlund was a California domiciliary, and if this Court should be of the view that it would be proper to grant recognition to the California proceeding only if Zetterlund, in effect, was domiciled in California, then it was, at the very least, a denial of a federal right for the Florida Supreme Court to dismiss the complaint instead of remanding the cause, so that the issue of domicile, not litigated below, might be litigated.

The issue was not litigated below for the reason that both the court and the parties considered themselves bound by the prior adjudication in the Florida domiciliary probate proceeding. Petitioners' complaint pleaded that Zetterlund was domiciled in Florida (R. 62, 65, 66). The answer of the respondent denied these allegations (R. 144, 145) and affirmatively alleged that Zetterlund was domiciled in California (R. 180). However, the fact was that between the date of that complaint (R. 61) and the answer (R. 144) the Florida Supreme Court had decided in the domiciliary probate proceeding that Zetterlund was domiciled in Florida. Accordingly, the respondents at the very close of their answer pleaded those proceedings and, in effect, admitted that they were binding on the issue of domicile, but maintained that that issue was still open because an appeal would be taken to the Supreme Court of the United States:

> "* * * these defendants are advised and believe and so state the fact to be, that a further appeal will be taken to the Supreme Court of the United States; that the validity of the judgment of the County Judge's Court in administration proceedings is still under attack; that there has been, by virtue of the facts aforesaid, no final determination of the judgment rendered in the County Judge's Court aforesaid, and no final determination of the judgment rendered in the County Judge's Court aforesaid, and no final determination that Olof Zetterlund was a resident of Florida at the time of his death; that it may still be determined that Olof Zetterlund was a resident of California during the incompetency proceedings in the Superior Court of Los Angeles County, California, above referred to" (R. 180).

Contrary to their representation, no such appeal was taken. Accordingly, *neither party in this litigation introduced any evidence directed to the issue of Zetterlund's domicile,* but both assumed under the pleadings that that issue was foreclosed.

The Chancellor found in the first trial that Zetterlund "has at all times been a legal resident of and domiciled in

Florida—though sojourning in California" (R. 215). The respondents filed an extensive petition for a writ of certiorari from the decision of the Chancellor in which objections were taken to numerous findings entered by the Chancellor (R. 17-43). There was, however, no assignment of error as to the finding that Zetterlund was domiciled in Florida. Instead, the respondents acknowledged that Zetterlund was domiciled in Florida but urged that "there was nothing of record by which any one in this state [Florida] could have been charged with knowledge that Olof Zetterlund was not a resident and citizen of California" (R. 33). Subsequently, respondents filed further assignments of error, and again they did not assign as error the finding that Zetterlund was domiciled in Florida (R. 313-317).

Accordingly, the Supreme Court of Florida, in its first opinion, affirming the Chancellor, accepted the position of both parties that the issue of domicile had been settled in the Florida domiciliary probate proceeding:

> "In Miller *v.* Nelson, 160 Fla. 410, 35 So. 2d 288, we affirmed a judgment of the Circuit Court of Dade County adjudicating Olof Zetterlund to be a citizen and resident of Florida at the time of his death. He had been a citizen of Dade County over fifty years but had spent the last four years of his life in California, New Mexico, Colorado and Oregon in the hope that the change would improve his health" (47 So. 2d at pp. 311-312; R. 506).

May the Florida Supreme Court, five years after the issue of domicile had been closed by the pleadings, for the first time suggest that that issue was open, and hold on the basis of a record in which neither party had introduced any evidence on the point that Zetterlund was domiciled in California? Petitioners were entitled as a federal right to an opportunity to litigate the issue of domicile in Florida if the Florida Court chose to consider that issue open although the pleadings did not present it. *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U. S. 673, 681; *Postal Tel.-Cable Co.* v. *Newport*, 247 U. S. 464, 476; *Old Wayne Mutual L. Asso.* v. *McDonough*, 204 U. S. 8, 15.

Assuming that this Court deems domicile to be material, the opinion of the Supreme Court of Florida likewise cannot be supported on the ground that it properly accorded full faith and credit to a California adjudication that Zetterlund was domiciled in that state. As we have shown, the California order did not purport to adjudicate that Zetterlund was a Californian domiciliary, and such a finding was not a jurisdictional prerequisite to the appointment of a guardian under California law (California Probate Code, Sections 1570, 1571;[1] *Engelhardt* v. *Superior Court*, 93 Cal. App. 320). If the opinion of the Supreme Court of Florida may be tortured into a holding that Zetterlund was domiciled in California and that a domiciliary guardian has power over foreign assets, although a non-domiciliary guardian does not, it was plain error to hold that Florida was bound by this imaginary California adjudication of California domicile. *Worcester County Trust Co.* v. *Riley*, 302 U. S. 292, 299; *Nelson* v. *Miller*, 201 F. 2d 277, 279.

If domicile is deemed material to the issue, the cause should at the very least be remanded.

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[1] Reprinted Appendix A, *infra*, pp. 2a-3a.

Conclusion.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Carl A. Hiaasen,
Broward National Bank Building,
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Counsel for Petitioners.

Harold L. Fierman,
Arthur M. Borden,
Of Counsel.

May 1, 1954.

APPENDIX A.

California Statutes.

California Probate Code, §1200. Mode of giving notice in certain instances: Posting of notice: Notice by mail: Proof of notice: Effect of finding. Upon the filing of the following petitions: * * * and in all cases in which notice is required and no other time or method is prescribed by law or by court or judge, the clerk shall set the same for hearing by the court and shall give notice of the petition or application or report or account by causing a notice of the time and place of hearing thereof to be posted at the courthouse of the county where the proceedings are pending, at least 10 days before the day of hearing, giving the name of the estate, the name of the petitioner and the nature of the application, referring to the petition for further particulars, and stating the time at which the application will be heard. * * *

Proof of notice: Effect of finding. Proof of the giving of notice must be made at the hearings; and if it appears to the satisfaction of the court that said notice has been regularly given, the court shall so find in its order, and such order, when it becomes final, shall be conclusive upon all persons. * * *

California Probate Code, §1517. Authority to vote stock or to give proxies: Waiver of notice of meetings, A guardian may give proxies to vote any shares of stock of a corporation, whether domestic or foreign, held in the estate, or to exercise any voting rights attaching to or arising from property held in the estate. He may waive notice of and consent to any meeting of shareholders or property owners or authorize by a writing any action which could be taken by shareholders.

California Probate Code, §1530a. Compromise, compounding or settlement of claim against estate of ward: Extension, renewal, or modification of obligation: Petition:

Notice, hearing and order. The guardian, with the approval of the court, may compromise, compound or settle any claim or demand against the estate or any suit brought by or against the guardian as such, by the transfer of specific assets of the estate, or otherwise. The court may also authorize the guardian, on such terms and conditions as may be approved by it, to extend or renew or in any manner modify the terms of, any obligation owing to or running in favor of the ward or his estate. To obtain such approval or authorization, the guardian shall file a verified petition with the clerk showing the advantage of the compromise, composition, settlement, extension, renewal or modification.

Notice, Hearing and Order. The clerk shall set the petition for hearing by the court and notice thereof shall be given for the period and in the manner required by Section 1200 of this code. If under this section the court authorizes the transfer of real property of the estate, conveyances shall be executed by the guardian, and they must refer to the order authorizing the transfer, and a certified copy of such order must be recorded in the office of the recorder of the county in which the real property or any portion thereof lies. Conveyances so made convey all the right, title, interest and estate of the ward in the premises at the time of the conveyance.

California Probate Code, §1570. Jurisdiction to appoint guardian of non-resident ward: Extent of guardianship. The superior court may appoint a guardian of the person and estate, or person or estate, of a minor or insane or incompetent person who resides out of the state and who is within the county, or who has estate within the county, and who has no guardian within the state, upon petition of any friends of such person or of anyone interested in his estate, in expectancy or otherwise. Before making such appointment, the court or judge must cause notice to be given to all persons interested, in such manner as deemed reasonable. The guardianship which is first granted of a nonresident ward extends to all the estate of the ward within this state, and the court of no other county has jurisdiction.

California Probate Code, §1571. Powers and duties: Bond. Every guardian of a nonresident ward has the same powers and duties, with respect to the estate of the ward within this state, and with respect to the person of the ward while living therein, as are prescribed by this code with respect to any other guardian. Such guardian must give bond to the ward as hereinbefore provided for other guardians, but his responsibility with regard to inventory, accounting and disposal of the estate is confined to such estate as comes into his hands in this state.

APPENDIX B.

MILLER *et al. v.* NELSON *et al.*[1]

Supreme Court of Florida, Division A.

April 30, 1948

Rehearing Denied May 29, 1948

160 Florida 410, 35 So. 2d 288.[2]

(289) CHAPMAN, Justice.

The State of California, by its Comptroller, Harry B. Riley, and Dora Miller and Harold M. Davidson, by separate petitions filed in the County Judge's Court of Dade County, Florida, prayed for an order declaring Olof Zetterlund to have been a resident of the State of California at the time of his death at San Gabriel, California, on the 21st day of August, 1945. Attached to the petitions were a copy of the last will and testament and codicil thereto of Olof Zetterlund for probate and ancillary proceedings in said court. The State of Florida, through its Comptroller, J. M. Lee, and the devisees and legatees of the last will and heirs and other interested parties filed answers and considerable testimony was adduced on the issue of whether Olof Zetterlund was a resident of the State of California or the State of Florida at the time of his death, and was the administration of the Zetterlund estate in Dade County, Florida, to be an original administration or an ancillary administration.

The County Judge hearing the testimony and considering the many exhibits introduced into evidence concluded, and so held, that Olof Zetterlund, on the 21st day of August, 1945, the date of his death in the State of California, was not a resident thereof but was a resident and citizen of the State of Florida. The petitions of the State of California,

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[1] The other opinions involved are reprinted in the Record (R. 505-515, 534-536, 891-892, 913-925).

[2] Page references are to the opinion as reprinted in 35 So. 2d 288.

Dora Miller and Harold M. Davidson were each accordingly denied and the probate proceedings thereon would continue and proceed as an original and domiciliary administration in the County Judge's Court of Dade County, Florida. On appeal said order was affirmed by an order of the Circuit Court of Dade County, Florida, and from said order of affirmance an appeal has been perfected here.

Posed for adjudication in this Court by counsel for appellants are four questions based in a measure on the construction or interpretation of the evidence and exhibits adduced by the parties and considered or construed in the Courts below and certified here. The questions are, viz.:

1. Did the evidence show that Olof Zetterlund, once a resident of the State of Florida, had left the State of Florida and had gone to California on a rest trip and while in California or Oregon he formed the intention to change his residence from Florida to California, and thereafter returned to California and purchased a home in which he lived until his death?

2. Were the legatees, devisees, and heirs at law of Olof Zetterlund who appeared in this cause as petitioners for probate of the will in Dade County, Florida, and who were served with notice of the proceedings to probate the will in California, estopped to apply to the Court of Dade County, Florida, for the probate of the will in Dade County?

3. Was the executor who is named in the original will of Olof Zetterlund which was offered for probate in Dade County, Florida, and who was not the executor named in the codicil to said will executed by Olof Zetterlund in the State of California and who was not related to said testator, a party with such interest as authorized him to contest the probate of said will and codicil and have ancillary proceedings instituted in Dade County, Florida.

4. Is the payment of an intangible tax or the presence of the name of a taxpayer on the intangible list in Dade County, Florida, evidence to prove domicile?

The case of Watts *v.* Newport, 149 Fla. 181, 6 So. 2d 829, involved a purported will alleged to have been made by Mrs. Letitia V. Graham. The questions presented were: (1) Was the alleged will dated August 20, 1937 forged; and (2) did Mrs. Graham on the date of execution have or possess the testamentary capacity to make a will? For and against these questions considerable testimony was taken and in construing or interpreting the same we, in part, said (text 149 Fla. at page 185, 6 So. 2d at page 830):

> "To answer the question, this Court will first examine the record to determine whether or not the Chancellor followed the correct rule of decision. The rule of decision is that if there is substantial competent evidence to support the findings of the (290) probate Judge and he did not misinterpret the legal effect of the evidence as a whole, his decree should be affirmed. In re Donnelly's Estate, 137 Fla. 459, 188 So. 108; Wilkins Estate, 128 Fla. 273, 174 So. 412; Alkire's Estate, 142 Fla. 862 [144 Fla. 606], 198 So. 475; Thompson's Estate, 145 Fla. 42, 199 So. 352."

The law makes it our duty on this appeal to examine the evidence and exhibits and determine if there is substantial competent evidence to support the findings of the Probate Judge and that he did not misinterpret the legal effect of the evidence as a whole. If as a result of the examination it is found that there is no substantial competent evidence to support the findings of the Probate Judge and that he misconstrued the evidence taken as a whole, then the findings of the Probate Court must be reversed, otherwise affirmed. Our recital of the evidence is therefore restricted to the pertinent and substantial portions reflected by the record.

Olof Zetterlund was born in Sweden on December 17, 1858. He died in San Gabriel, California, on August 21, 1945, between 86 and 87 years of age. He came to America about the year 1880 and was later employed by Henry Flagler in acquiring the right-of-way for the Florida East

Coast Railway Company, and about fifty years ago acquired an interest in two and one-half miles of ocean front land in then Dade County, but now in Dade and Broward Counties. During World War I he married Mrs. Jeanette Weaver, a widow, and they lived together as husband and wife until 1932, when a divorce was obtained and the former wife died during the year 1940. There were no children born to the marriage, but Mrs. Zetterlund had a daughter, Elsie Z. Weaver, by her first marriage. It is not disputed that Olof Zetterlund resided continuously in Dade County, Florida, for half a century preceding the Fall of 1941. He established a home at 1702 South Bayshore Drive, Miami, Florida, where he resided for many years, but in 1936 he moved from his Bayshore home to the Oceanic Hotel in Miami Beach. In 1927 he employed Dora Miller as his housekeeper and she served as such, and in other capacities, continuously from the date of employment in 1927 until his death on the 21st of August, 1945. In 1941 he sold his Bayshore Drive home.

In the Summer of 1941 Olof Zetterlund went to a sanitarium for his health at Battle Creek, Michigan, and corresponded with his employees, Mrs. Ellen Burdet and Dora Miller, his housekeeper. On July 1, 1941, Olof Zetterlund wrote Mrs. Ellen Burdet from Battle Creek, Michigan, requesting Mrs. Burdet to induce Dora Miller to spend her vacation in Michigan rather than California. On July 9, 1941, he wrote Dora Miller in Los Angeles, California. On July 28, 1941, he wrote Mrs. James Burdet and said: "I am here for my health, but what to do I don't know. I wish to be home. I don't know how Mrs. Dora Miller lives in Los Angeles, California." On October 16, 1941, Dora Miller wrote from Los Angeles to Olof Zetterlund and, in part, said: "I would like to come home about October 25th, though I will let you know definitely when I will arrive at Miami. Please do not forget that you shall get ready to go back with me in November to Los Angeles." In November, 1941, Dora Miller took Olof Zetterlund, then about 83 years of age, to California on a vacation trip to improve his health. Olof Zetterlund and Dora Miller, his housekeeper, resided in Los Angeles from November, 1941, until January, 1942, and then went to Santa Fe, New Mexico, where they lived until May, 1942. From May, 1942, through August, 1942, they lived at Manitou Springs, Colorado, and in September returned to Santa Fe, New Mexico, and resided there until January, 1943, and then went to Ashland, Oregon, where they remained until September, 1943. They returned in October, 1943, to Baldwin Park, California, and there lived until December, 1943, and from January, 1944, until August 21, 1945, the date of his death, they lived at San Gabriel, California. The record fails to show any letters or communications personally signed by Olof Zetterlund from the date of his arrival in California in 1941 until his death in August, 1945, but that such letters, documents, communication or checks bearing his signature were each signed by Dora Miller.

On November 17, 1941, Dora Miller wrote from Los Angeles, California, to Miss (291) Freida Elvers about Mr. Zetterlund, viz.: "He wants to go home and attend to it." "Please don't forget that miracles have yet to happen about his memory." On November 25, 1941, she wrote the same party in part: "I know that Mr. Zetterlund will get his perfect memory again, but it will take time. It is more than two years since he is disturbed and it will take several months for improvement. I know he will not be home by January 28th (meaning Miami Beach, Florida). On December 10, 1941, she wrote: "He is improving but slowly." On December 14, 1941, she wrote in part, viz.: "How I long to hasten the improvement of Mr. Zetterlund, but we have to be patient. This turmoil of war only the Presence can protect us. We just can't go home as yet as all this effort would be fruitless. He would not stay away from office at home and only away from the office he will get back to his normal way." On January 16, 1942, Dora Miller, in a letter to Miss Elvers, in part said: "Father is improving but let's say about 20% and we have 80% yet to go." On March 11, 1942, Dora Miller wrote Mrs. Burdet, Miami Beach, Florida, from Sante Fe, New

Mexico, in part viz.: "He could not take care of his office as yet and we have to try to keep him away longer. He is ready to go home any day but what good would it do him or his business?"

On November 9, 1942, Dora Miller, writing from Santa Fe to Mrs. Burdet in Miami Beach, in part said: "It seems that I am at a standstill at what to do with father as he always wants to go home. We may go home after Christmas. I do not get any help from the doctors. All they have to say is that it is his age." On January 9, 1943, Dora Miller writing from Santa Fe to Mrs. Burdet at Miami Beach, in part said: "When I think of going back to Miami, in about three months it gets hot there. Doctors urge that I have to take father away from disturbing matters. He does not remember the people at home but he surely knows that he has a hotel at Miami Beach. That's what made it so bad when we traveled, as he wanted to go to Miami. We hardly could bring him to Battle Creek as he has to have some one with him every minute, day and night, and I know he would receive plenty of dope to keep him quiet." On August 3, 1943, she wrote in part as follows: "I had to sign it as father just can't write with ink that any one could make out his name." On October 24, 1943, she wrote: "Father cannot write his name any more and the bank wants his signature. Mr. Zetterlund has begged me many times not to send him to the hospital or sanitarium. He suffers with kidney trouble since last November. A whole year already and he has not found a remedy yet. The M. D. gives him only dope, which makes it worse." In December, 1943, she wrote that, "Father gave me a power of attorney of the company. Father would have to sign papers and he does not sign at all at the present." In January, 1944, she wrote: "Father could write in the Summer but not now. I hold his hand but it does not look like his signature. Father can not sign his name." In September, 1944, she wrote that "Mr. Zetterlund at the present has difficulty in walking and the doctor advised to keep him off his feet as much as possible." The capital stock returns of the two corporations owned by Olof Zetterlund, viz., Hallond Land Company and Elsinore Beach Corporation, were filed with the Secretary of State of the State of Florida on September 11, 1944. Dora Miller affixed the signature of Olof Zetterlund and herself to each of these returns. The same were sworn to by Dora Miller and Olof Zetterlund. The address of each as President and Secretary of the corporations was given as 528 Collins Avenue, Miami Beach, Florida. The permanent address of Dora Miller and Olof Zetterlund was given as Miami Beach, Florida. Her testimony is to the effect that Mr. Zetterlund changed his domicile from the State of Florida in June, 1943, to the State of California. It is not disputed that she was some 33 years younger than Olof Zetterlund. The power of attorney from Olof Zetterlund to Dora Miller is dated January, 1944, and it recites that Zetterlund was a resident of the State of California.

Counsel for appellants emphasize given portions of the testimony of Dora Miller: That Zetterlund told Dora Miller and Ellen Burdet that he loved California and after the purchase of a home in January, 1944, in San Gabriel, California, he told Dora Miller, "I love this house very much. It (292) is a small house. You can take care of my house and take care of me as long as I live. This shall be my home and as long as you will take care of me and be good to me as you have always done, and when I leave this world the same shall be your house. I would like to live here as long as I live. When the time comes I am selling out everything in Florida." On January 26, 1944, in the signing of the power of attorney to Dora Miller it recited: "I, Olof Zetterlund, of San Gabriel, County of Los Angeles * * *" Mr. Zetterlund decided when they were in Ashland, Oregon, that he was going to California to make it his home and said: "That is the best climate we have seen. When we go back, I am going to buy a home and live there as long as I live."

Ellen Burdet testified that Mr. Zetterlund told her that he would be happy to go to California because the climate was better than Miami Beach; that he would love to go out and that he was very happy and he wanted to buy a home and he wanted to be comfortable. He told George

Sennett in December, 1943, that he intended to make California his home and that he would love to spend the rest of his days in California and that he bought a home and moved into it around the 1st of January, 1944. His speech had failed him but he knew what he was doing and how to handle his business; that in the last years of his life no one could dominate or influence him. Philomena Sennett, wife of George Sennett and sister of Dora Miller, assisted in the purchase of the home for Mr. Zetterlund. Mr. Zetterlund signed a codicil to his will under date of August 3, 1945, in California and died approximately three weeks thereafter.

Circuit Judge Holt, of Dade County, Florida, filed a concurring opinion to the order of affirmance and listed certain facts sustaining Mr. Zetterlund's domicile in Florida at the time of his death rather than the State of California, viz.:

> "1. Deceased had resided in Florida for nearly fifty years.
>
> "2. The sole purpose of his trip to California in 1941 was occasioned by his health. (He died August 21, 1945.)
>
> "3. Numerous letters in evidence indicated his continuous and abiding intention to return to Florida.
>
> "4. All of his property and the source of all of his income was located in Florida.
>
> "5. The *only* property possessed by the deceased in the State of California at his death were two suits of clothes, some shirts, socks and shoes. He did not own any real property in that State.
>
> "6. His corporate stock in various corporations in which he was interested were situated in Florida.
>
> "7. His last Will and Testament was in Florida.
>
> "8. The bank account which he used throughout his stay in California was situated in Florida (First

National Bank of Miami) where he was listed as a resident of Miami Beach.

"9. The telephone directory and the business and city directory listings of deceased until his death were in Miami Beach, Florida, and there were none in the State of California.

"10. All of the personal effects of deceased, including clothes, heirlooms, etc., were situated in Florida, and never in California.

"11. Throughout the entire period he maintained a business office in Miami Beach, Florida.

"12. His stationery listed his address as Miami Beach, Florida.

"13. He held various offices in his Florida corporations until June, 1945, and drew salaries as such until that time.

"14. Corporate returns to the State of Florida of two of his corporations stated his Post Office address to be Miami Beach, Florida.

"15. Intangible personal property taxes of deceased were paid in Florida.

"16. The absence of a communication to his office in Florida or to his attorneys or agents in Florida announcing any change in residence.

"17. The deceased retained a room in the Oceanic Hotel which he or his corporation owned.

(293) "18. The deceased maintained a bank safe deposit box in Florida the entire time he was in the State of California.

"19. All of the living expenses of deceased were paid by check drawn on the First National Bank of Miami, Florida.

"20. He arrived in California a sick man and remained in such condition until his death, consequently did nothing except rest and attempt to regain his health.

"21. Made communications in which he stated his intention to return to the State of Florida."

Mr. Zetterlund was in bad health in the Summer of 1941, and for that reason went to a sanitarium at Battle Creek, Michigan. He went to California in the Fall of 1941 with Dora Miller to regain his health. They left California for Santa Fe, New Mexico, for a higher elevation or altitude, and in the Summer went from Santa Fe to Manitou Springs, Colorado, then back to Santa Fe and from there to the State of Oregon. In June or September of 1943 Mr. Zetterlund, when in the State of Oregon, decided on California as his future domicile and a home was purchased by him in 1944 and title taken in Dora Miller. It is not disputed that Mr. Zetterlund had been suffering from numerous senile ailments and under treatment by physicians since 1941. Talking and writing were difficult for him. Valuable property and lifetime accumulations located in the Miami area were never transferred to California. Accounts with banks in both New York City and Florida were never changed. He paid through Dora Miller in 1944 an intangible tax on his Florida corporations to the Comptroller of Florida and gave his permanent address and that of Dora Miller as Miami Beach, Florida. The soundness of Mr. Zetterlund's mind due to senile ailments from 1941 to 1945 was not definitely established. A person of unsound mind does not have the ability to acquire a new domicile. Mr. Zetterlund gave Dora Miller a power of attorney reciting therein that he was a resident of California, and shortly thereafter was by a California court adjudged an incompetent.

An adult of unsound mind, who by reason of his mental status cannot acquire a new domicile for himself, cannot have his domicile changed for him by being in fact carried by another person, no matter how closely related to him, to another place. One's mind may be so weak, whether by nature or by extreme age, as to be unable to form a settled intent to change his home and in that case cannot change his domicile. Under these circumstances a person without legal proceedings taking charge of the dependent person cannot change his domicile. Beale on Conflict of Laws, Volume One, page 225.

Beale on Conflict of Laws, pages 132, 133, states the rule of domicile thusly: The domicile of origin is assigned to a person by operation of law, without any concurring will of his. He cannot by his own will or act change this domicile until he becomes *legally* capable by the exercise of his own will. When *legally* capable it is within his power to change his domicile. A person who is a *normal* adult may change his domicile and thereby acquire a domicile of choice. As the domicile of origin is presumed to continue, the burden of proof rested on the petitioners below to establish (1) that Mr. Zetterlund abandoned his domicile of origin in Florida; and (2) that it was his intention to change his domicile from Florida to the State of California; and (3) that Mr. Zetterlund had and possessed sufficient mental capacity to form and have the requisite intent to change his domicile from the State of Florida to the State of California. The rule supra is not in conflict with our previous holdings in Warren *v.* Warren, 73 Fla. 764, 75 So. 35, L. R. A. 1917E, 490; Gipson *v.* Gipson, 151 Fla. 587, 10 So. 2d 82, and similar cases. See Texas *v.* Florida, 306 U. S. 398, 59 S. Ct. 563, 83 L. Ed. 817, 121 A. L. R. 1179; Riley *v.* New York Trust Co., 315 U. S. 343, 62 S. Ct. 608, 86 L. Ed. 885.

Pertinent language of the order of dismissal is, viz.: "and having carefully considered the petitions filed, and each and every of the answers filed, the testimony and exhibits, and after a due consideration thereof, finds that Olof Zetterlund, deceased, was at the time of his death, on to-wit, the 21st day of August, 1945, a resident and citizen of the State of Florida and (294) the County of Dade, and that his said last Will and Testament was lawfully admitted to probate in Dade County, Florida on

September 6, 1945." Observing the rule enunciated in Watts *v.* Newport, supra, it is our conclusion that there was substantial competent evidence to support the findings of the probate Judge and that he did not misinterpret the legal effect of the evidence as a whole.

We have not overlooked the four questions posed for adjudication by counsel for appellants, which have been exhaustively and thoroughly presented by their briefs and ably argued at the bar of this Court. We fail to find error in the record.

Affirmed.

THOMAS, C. J., and TERRELL and SEBRING, JJ., concur.

September 2, 1940, [illegible] the rule enunciated in Marcus Hospital, supra, [illegible] conclusion that there was substantial competent evidence to support the finding of the probate judge that he did not understand the legal effect of the [illegible] he was signing.

We have not overlooked the many questions raised and argumentation by [illegible] appellants, which have been exhaustively and thoroughly presented by their briefs and able argument at the bar of this Court. We find no [illegible] in the record.

Affirmed.

Terrell, C.J., and Thomas and [illegible], JJ., concur.

FILED
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HAROLD B. WILLEY, Cler

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. [redacted] 62

GUSTAF RENSTA, d.b.n.c.t.a., of the Estate of OLOF ZETTERLUND, Deceased, substituted in the place of Samuel Nelson, as Executor, now Deceased, et al., Petitioners,

vs.

BEVERLY BEACH PROPERTIES, INC., a Florida Corporation, James Q. Burdet, Ellen W. Burdet

---

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No.

Gustaf Rensta, d.b.n.c.t.a., of the Estate of Olof Zetterlund, Deceased, substituted in the place of Samuel Nelson, as Executor, now Deceased, et al., Petitioners,

vs.

Beverly Beach Properties, Inc., a Florida Corporation, James Q. Burdet, Ellen W. Burdet.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA.

[fol. 1] [Stamp:] Filed Superior Court, May 17, 1945. J. F. Moroney, County Clerk. —— ——, Deputy

Nelson's Exhibit 1—California incompetency proceedings of Olof Zetterlund from May 17, 1945 to May 31, 1946.

In the Superior Court of the State of California
In and for the County of Los Angeles

In the Matter of the Guardianship of the Person and Estate of Olof Zetterlund, an Incompetent Person.

No. 243553

Petition for Appointment of Guardian

The petition of Dora Miller respectfully shows:

That Olof Zetterlund is a widower eighty-five (85) years of age. That he resides at 525 North Del Mar, San Gabriel, California. That for a number of years he has been in failing health, and your petitioner has had the sole care and responsibility of Olof Zetterlund, and has been caring for and managing his properties and his estate as attorney in fact, under a general Power of Attorney executed by Olof Zetterlund January 26, 1944, and duly recorded in the Los Angeles County Recorder's Office January 29, 1944, in Book 20,588, at Page 278 of Official Records; a photostatic copy of which is attached hereto.

That Olof Zetterlund has no relatives in the State of California, and no living relatives of the second degree. That Olof Zetterlund owns real and personal property that needs care and attention. That your petitioner is informed and believes, and basing her allegations upon such information [fol. 2] and belief, alleges that the assets of Olof Zetterlund are as follows:

Personal Property

Bank accounts:

1. First National Bank of Miami, Florida	$ 1,516.15
2. Bank of America, Alhambra Branch	2,736.75
3. Skandinaviska Banken, Stokholm, Sweden, as per last statement, 12-31-44, Kr. 29.488.11;	
4. Svenska Handelsbanken, Stokholm, Sweden, as per statement, 6-30-42, Kr. 11.824.49, Total Kr. 41.312.60, U. S. Dollars	10,328.15
5. Greenwich Savings Bank, 1356 Broadway, New York, New York	1,115.90
6. East River Savings Bank, 41 Rockefeller Plaza, New York, N. Y.	1,110.04
Total Bank Accounts	$16,806.99

Stocks:

1. Swedish American Lines, 200 shares, 636 Fifth Avenue, New York, N.Y., Kr. 20.000.00, U. S. Dollars	5,000.00
Piano and personal effects	450.00

In addition to the above assets of Olof Zetterlund, he is the principal stock holder in the Elsinore Beach Corporation, Miami Beach, Florida, which corporation has issued

6,553 shares of no par value stock. That Olof Zetterlund owns 65.53% of the total stock issued. That said corporation owns one parcel of real property, and has been offered $650,000.00 for said real property. That the other stock holders of the corporation are of the opinion, that inasmuch as this is unimproved property, it should be sold immediately at this high purchase price. That from the amount of the sale price, Mr. Zetterlund would receive a gross amount of approximately $422,500.00, if and when said sale is completed.

That in addition thereto, Olof Zetterlund is the sole owner of the Halland Land Company of Miami Beach, Florida, a Florida corporation, and owns 195 shares of no par value [fol. 3] stock. That said corporation owns real property, including the Oceanic Hotel Building. That the assets of said corporation are appraised as follows:

1. Oceanic Hotel Building	$310,500.00
2. Other assets, real property	79,345.00
Appraised Value	$389,845.00

That all income of the Halland Land Company is handled through the corporation offices in Florida. The annual income from the assets of the Halland Land Company are approximately $39,000.00, and the expenses approximately $30,300.00 annually, leaving a net income of approximately $8,700.00 a year.

That Olof Zetterlund, because of his age and his physical condition, is not capable of caring for his person or his estate. That it is necessary that a Guardian be appointed to care for the person and estate of Olof Zetterlund, so that the assets of the estate will be preserved, and so that he may be given proper care and support. That no legal Guardian has ever been appointed by Will or otherwise, and it is necessary for the protection and conservation of his estate, and to properly care for the assets of his estate and for his person, that your petitioner be appointed as the Guardian of the Person and Estate of Olof Zetterlund.

That Olof Zetterlund has an attorney, Glynn O. Rasco, of Miami Beach, Florida, looking after his interests in Florida, and that your petitioner and her attorney, Harold

M. Davidson, have had a great deal of correspondence with parties desiring to purchase the property owned by the Elsinore Beach Corporation, and for the period of approximately one year have been negotiating with said persons, endeavoring to obtain the best offer possible for the purchase of said property. That the first offer for the purchase of said real property was $400,000.00 That your petitioner with the aid and assistance of the other directors of the [fol. 4] Elsinore Beach Corporation have had offers for the purchase of this property from time to time, and at the present time, a financially responsible purchaser has offered to purchase the property owned by the Elsinore Beach Corporation for $650,000.00, and has placed a substantial deposit with Mr. Glynn O. Rasco, the attorney in Florida representing your petitioner and Olof Zetterlund. That said attorney has advised that due to the fact that this property is vacant, unimproved property, that in his opinion the Florida boom has reached its peak, and that due to the present inflation prices, he feels that the estate of Olof Zetterlund would be greatly damaged and would lose a substantial amount of money if this sale were not completed. That all the other directors and stock holders of the Elsinore Beach Corporation feel it is for the best interest of the stock holders of the Elsinore Beach Corporation and Olof Zetterlund, that this sale be completed with dispatch. That it will be necessary for your petitioner or her attorney to go to Florida and be present at a stock holders meeting of the Elsinore Beach Corporation, in order to complete the sale of this property. That it is the desire of your petitioner that the Court direct and authorize her to go to Florida and be present at the meeting, or that she be authorized and directed to delegate such powers to her attorney, Harold M. Davidson, and authorize him to immediately go to Miami Beach, Florida, attend a stock holders meeting of the Elsinore Beach Corporation, and complete the sale of the assets as set forth hereinbefore in this petition.

That Olof Zetterlund requires the services of a registered nurse twenty-four (24) hours a day. That the salary of two extra nurses, other than your petitioner, would amount to $450.00 per month. That the services of your petitioner in taking care of Olof Zetterlund is reasonably worth $200.00

per month. That he requires the services of a physician and [fol. 5] the average expenditure for such services is $100.00 a month. That in addition thereto, a sum of $325.00 a month is required for up-keep of the property in which he is making his home, food, telephone, utilities, clothing, medicines and other incidentals necessary to his health, care and sustenance. That a reasonable sum to be expended for the care and support of the person of Olof Zetterlund is $1,000.00 a month. That your petitioner will keep a complete and accurate statement of all expenditures, and if said sum is not necessary for his care and maintenance for any particular month, it will not be used.

WHEREFORE, your petitioner prays that a date be set for the hearing of this petition. That she be appointed the Guardian of the Person and Estate of Olof Zetterlund. That notice of this petition and the hearing thereof be given to persons properly entitled thereto according to law. That a notice of the petition and the hearing thereon be given to the said Olof Zetterlund as required by law. That your petitioner be authorized to withdraw from the funds of Olof Zetterlund and spend whatever sum of money is necessary for his support, care, maintenance, doctor bills, nursing bills and any other expenditures necessary for the care of his person. That she be permitted and authorized to expend, not to exceed $700.00, for the expense of the trip of her attorney to Miami Beach, Florida, for the purpose of disposing of the assets of the Elsinore Beach Corporation of Florida, and the Halland Land Company of Florida. That she be authorized to delegate such powers as are required by the Florida statute, to permit her attorney, Harold M. Davidson, to represent Olof Zetterlund at a meeting of stock holders of the Elsinore Beach Corporation and the Halland Land Company, and to vote the stock owned by Olof Zetterlund, and to perform any other duties necessary for him to perform to complete the sale of the assets of the [fol. 6] Elsinore Beach Corporation and of the Halland Land Company, and from said sale to accumulate any sum of money due Olof Zetterlund, and to sign any and all papers necessary to complete the sale of said assets.

Dated at Alhambra, California, May 17, 1945. Harold M. Davidson, Attorney for Petitioner.

[fol. 7]

POWER OF ATTORNEY

General

Know all Men by these Presents: That I, Olof Zetterlund of San Gabriel, County of Los Angeles, State of California, have made, constituted, and appointed, and by these presents do make, constitute and appoint Dora Miller my true and lawful Attorney for me and in my name, place, and stead, and for my use and benefit, to ask, demand, sue for, recover, collect, and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever as are now or shall hereafter become due, owing, payable or belonging to me, and have, use and take all lawful ways and means in my name or otherwise for the recovery thereof, by attachment, arrests, distress or otherwise, and to compromise and agree for the same, and acquittances or other sufficient discharges for the same, for me and in my name, to make, seal, and deliver; to bargain, contract, agree for, purchase, receive, and take lands, tenements, hereditaments, and accept the seizin and possession of all lands, and all deeds and other assurances, in the law therefor and to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements, and hereditaments, upon such terms and conditions, and under such covenants as she should think fit. Also to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares, and merchandise, choses in action, and other property in possession or in action, and to make, do, and transact all and every kind of business of what nature or kind soever, and also for me and in my name, and as my act and deed, to sign, seal, execute, deliver and acknowledge such deeds, leases and assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter-parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases and satisfaction of mortgage, judgment and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises.

Giving and Granting unto my said Attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present, hereby ratifying all that my said Attorney, Dora Miller shall lawfully do or cause to be done by virtue of these presents.

In Witness Whereof, I have hereunto set my hand and seal the 26th day of January, nineteen hundred and forty-four.

Olof Zetterlund.

[fol. 8] State of California,
County of Los Angeles ss:

On this 26th day of January, A. D. 1944, before me, a Notary Public in and for said County and State, personally appeared Olof Zetterlund, known to me, (or proved to me on the oath of ....), to be the person whose name is subscribed to the within Instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Thos. B. Reed, Notary Public in and for said County and State.

[Endorsed:] No. —. Power of Attorney. General, Olof Zetterlund to Dora Miller. Dated January 26, 1944. Order No. 1255. When recorded, please mail this instrument to Thos. B. Reed, 109 E. Badillo St., Covina. Compared: Read by Reichert; Document, Colon.

[fols. 9-10] State of California,
County of Los Angeles, ss:

Dora Miller, being by me first duly sworn, deposes and says: That she is Petitioner in the above entitled matter, that she has read the foregoing Petition for Appointment of Guardian and knows the contents thereof; and that the same is true of her own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that she believes to be true.

Dora Miller.

Subscribed and sworn to before me this 17th day of May, 1945. H. M. Davidson, Notary Public in and for the County of Los Angeles, State of California. (Notarial Seal.)

[fols. 11-12] Executor or administrator must subscribe below to statement of assets.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Dora Miller, Guardian of the Person and of the estate of Olof Zetterlund, an incompetent person, being duly sworn, says that the following inventory contains a true statement of all the assets of the estate of said deceased, which has come to her knowledge or possession, and particularly of all the money belonging to said deceased, and of all just claims of said deceased against the said affiant, in accordance with statement from James Q. Burdet.

Dora Miller.

Subscribed and sworn to before me, this 17th day of May, 1945. H. M. Davidson, Notary Public in and for said county and state.

INVENTORY AND STATEMENT OF ASSETS

Moneys belonging to said deceased, which have come to the hands of —— ——

1. Bank of America, Alhambra Branch, $2.990.41.
2. East River Savings Bank of New York, N. Y., $1,160.94.
3. Excelsior Savings Bank of N. Y., $1,207.67.
4. Bowery Savings Bank of N. Y., $2,153.79.
5. Greenwich Savings Bank of N. Y., $1,015.90.
6. First National Bank of Miami Beach, Florida, $1,516.15.
7. Skandianaviska Banken, Stokholm, Sweden, KR 29,488.11.
8. Svenska Handelsbanken, Stokholm, Sweden, KR. 11,824.49.

(Items 7 and 8, Swedish money KR 41,312.60, or $10,328.15)

9. 200 shares stock Swedish American Lines, KR 20,000.00, or $5,000.00.

10. 6,553 shares no par value stock Elsinore Beach Corporation, a Florida Corporation, estimated value, $268,673.00.

11. 198 shares no par value stock, Halland Land Company, a Florida corporation, estimated value $389,378.22.

12. Personal effects of Olof Zetterlund in his home in San Gabriel, California, $450.00.

13. Personal effects, office furniture, etc., in Miami Beach, Florida, $1,500.00.

(Total estimated value, $685,374.23.)

[fol. 13] Harold M. Davidson, Attorney for Estate, 219 Professional Building, 317 West Main Street, Alhambra, California. ATlantic 2-6138; CUmberland 3-1511.

[fol. 14] [Stamp:] Filed May 23, 1945. J. F. Moroney, County Clerk. G. Olsen, Deputy.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

243553

In the Matter of the Estate and Guardianship of OLOF ZETTERLUND, An Incompetent Person

CITATION—NOTICE OF HEARING OF APPLICATION FOR APPOINTMENT OF GUARDIAN

The People of the State of California to Olof Zetterlund:

Pursuant to the law you are hereby cited and required to appear before the judge of this court, in the County of Los Angeles, State of California, at the Court Room of Department No. 25, on the 23 day of May, 1945, at 9:30 o'clock A.M., then and there to show cause, if any, why you should not be adjudged an incompetent person, and why Dora

Miller should not be appointed guardian of your person and estate according to the verified petition on file.

Dated May 17, 1945.

J. F. Moroney, County Clerk. By C. Z. Maker, Deputy. (Seal.)

NOTE:—The Citation must be personally served at least five (5) days before the time appointed for the hearing of the petition. And it must be returned to this Court with an affidavit of the person making such service.

[fol. 15] AFFIDAVIT OF SERVICE OF CITATION

STATE OF CALIFORNIA,
County of Los Angeles, ss.:

H. M. Davidson, being duly sworn, deposes and says: That he is and was at the time of the service of the within Citation, a citizen of the United States over the age of eighteen years, and not a party of interest; that he received the within Citation on the 17th day of May, 1945, and personally served the same on the 17th day of May, 1945, at the County of Los Angeles, upon the within named Olof Zetterlund by delivering to him personally a copy of the said Citation.

H. M. Davidson.

Dated 5/18, 1945.

Subscribed and sworn to before me this 22 day of May, 1945. J. F. Moroney, County Clerk, by Inez Deems, Deputy, Notary Public. (Seal.)

[fol. 15a] [Stamp:] Filed May 23, 1945. J. F. Moroney, County Clerk. G. Olsen, Deputy

F. A. CUMMINS, M. D.
701 Medical-Dental Bldg.
947 West Eighth St.
Los Angeles, Calif.
VAndike 1352
# 243553

5-22-45.

Probate Court, Los Angeles, Cal.:

Mr. Olof Zetterlund is under my care for a number of senile ailments and his condition is really serious at this time.

I feel that his presence in court is a physical impossibility.

Respectfully, F. A. Cummins, M. D.

[fol. 16] [Stamp:] Filed Superior Court May 23, 1945.
J. F. Moroney, County Clerk. H. L. Doyle, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 243,553

In the Matter of the Guardianship of the Person and Estate of OLOF ZETTERLUND, an Incompetent Person

Order Appointing Guardian of the Person and Estate of Olof Zetterlund, and Authorizing Certain Expenditures To Be Made and Duties Performed

The petition of Dora Miller, praying for the appointment of herself as Guardian of the Person and Estate of Olof Zetterlund, an incompetent person, came on regularly to be heard this 23rd day of May, 1945, at the hour of 9:30 A. M. o'clock, in Department 25 of the above entitled Court, the Honorable Newcomb Condee, Judge presiding, and due proof having been made to the satisfaction of the Court, this Notice of Hearing of said Petition has been regularly given in the manner and for the time required by law, and medical testimony having been taken that the said Olof Zetterlund is unable to attend this hearing and can not be produced, and no objections having been made or filed thereto, the Court, after a full hearing and examination upon said petition, finds that all the allegations of said petition are true; that said Olof Zetterlund is incapable of taking care of himself and managing his property; that the said Olof Zetterlund has no relatives living in the State of [fol. 17] California; and that Dora Miller is a fit and proper person to be appointed such Guardian;

It is hereby ordered, adjudged and decreed that said Olof Zetterlund is an incompetent person and is incapable of taking care of himself and managing his property; that Dora Miller be, and she is hereby appointed Guardian of the Person and Estate of said Olof Zetterlund, and that Letters of Guardianship be issued to her upon her giving a bond to said incompetent person in the sum of $450,000.00, corporate surety, and upon her taking and subscribing an oath as prescribed by law.

It is further ordered, adjudged and decreed that said Dora Miller, as Guardian of the Person and Estate of Olof

Zetterlund, an incompetent person, is authorized to expend a sum not exceeding $1,000.00 per month for the care and support of Olof Zetterlund, including services of a physician, nursing services, care and up-keep of the residential property in which he is living, the payment of food, utilities, clothing, medicines and other incidental expense necessary to his health, care and sustenance.

The Court finds that Olof Zetterlund is a member of a Board of Directors and the chief stock holder in two Florida corporations, to-wit: the Elsinore Beach Corporation and the Halland Land Company. That there is at the present time negotiations pending for the sale of real property owned by the Elsinore Beach Corporation and the Halland Land Company. That it is necessary that Olof Zetterlund be represented at a meeting of the Board of Directors of the Elsinore Beach Corporation, and at the meeting of the Board of Directors of the Halland Land Company, with offices in Miami Beach, Florida, to vote his stock, to vote as a member of the Board of Directors, to perform other duties as a director and stock holder of said corporations in order to complete the sale of said property. That it is for the best interests of Olof Zetterlund that his Guaridan proceed immediately, or authorize her attorney, Harold M. [fol. 18] Davidson, to go to Florida and to fully participate in a Directors and Stock Holders meeting of both corporations, for the purpose of appointing or electing new directors, if necessary; voting the stock owned by Olof Zetterlund; and performing any other acts necessary to complete the sale of said real property; and to perform any other duties in connection with the business of both corporations that Olof Zetterlund himself might and could perform if he were present in person, including the winding up and dissolving of said corporation, and to settle a law suit now pending between the members of the Elsinore Beach Corporation. Said Guardian is authorized to expend not to exceed the sum of $700.00 for the expense of the trip of her attorney, Harold M. Davidson, to Miami Beach, Florida, and return. Wherefore it is further ordered that said guardian is hereby authorized and empowered to perform all necessary acts, and execute all necessary papers to carry out and consummate the sales, and all other steps necessary therein.

Dated: May 23, 1945.

Newcomb Condee, Judge.

[fol. 19] FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Home Office Baltimore

In the Superior Court of the State of California in and for the County of Los Angeles

In the Matter of The Estate and Guardianship of Olof Zetterlund, an Incompetent Person

Bond Upon Qualifying

Know All Men by these Presents:

That we, Dora Miller, as Principal, and the Fidelity and Deposit Company of Maryland, a corporation duly organized and existing under the laws of the State of Maryland and duly authorized and licensed by the laws of the State of California to do a general surety business in the State of California, as Surety, are held and firmly bound to Olof Zetterlund, Four hundred fifty thousand and no/100 Dollars ($450,000.00), lawful money of the United States of America, to be paid to the said Olof Zetterlund, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and successors and assigns, jointly and severally, firmly by these presents.

The condition of the above obligation is such, that, whereas, an Order was made by the Superior Court of the State of California, in and for the County of Los Angeles, on the 23rd day of May, A. D. 1945, appointing the above Principal Guardian of the Person and Estate of Olof Zetterlund, an Incompetent Person, and letters of Guardianship were directed to be issued to Dora Miller upon her executing a bond according to law in the sum above named.

Now, therefore, if the said Principal shall faithfully execute the duties of the trust according to law, then this obligation shall be void; otherwise to remain in full force and effect.

In witness whereof, the seal and signature of the said Principal is hereto affixed, and the corporate seal and name of the said Surety is hereto affixed and attested by its duly authorized officer, this 23rd day of May, A. D. 1945.

Dora Miller (Seal). Fidelity and Deposit Company of Maryland, by Robert Hecht, Its Attorney-in-Fact.

Attest: Theresa Fitzgibbons, Agent. (Seal.)

[fol. 20] State of California,
County of Los Angeles, ss:

On this 23rd day of May, 1945, before me S. M. Smith, a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Robert Hecht known to me to be the Attorney-in-Fact, and Theresa Fitzgibbons known to me to be the Agent of the Fidelity and Deposit Company of Maryland, the corporation that executed the within instrument, and acknowledged to me that they subscribed the name of the Fidelity and Deposit Company of Maryland thereto and their own names as Attorney-in-Fact and Agent, respectively.

S. M. Smith, Notary Public in and for the County of Los Angeles, State of California.

[Endorsed:] No. 243553. Superior Court of the State of California in and for the County of Los Angeles, Department No. 25 Probate. In the Matter of the Guardianship of Olof Zetterlund, Incompetent. Bond of Dora Miller, Gdn. Given upon Qualifying. Approved May 23, 1945. —— Brown, Court Commissioner, Los Angeles County. Fidelity and Deposit Company of Maryland, 1209-16 Bank of America Building, Los Angeles, California.

[fol. 21] [Stamp:] Filed May 23, 1945. J. F. Moroney, County Clerk. Marie McCarthy, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 243,553

In the Matter of the Estate and Guardianship of Olof Zetterlund, an Incompetent Person

Letters of Guardianship

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Dora Miller is hereby appointed Guardian of the person and estate of Olof Zetterlund an Incompetent Person.

Witness, J. F. Moroney, Clerk of the Superior Court of the County of Los Angeles, with the seal thereof affixed, this 23 day of May, 1945.

By order of the Court. J. F. Moroney, County Clerk, by Marie McCarthy, Deputy.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of California, and that I will faithfully perform, according to the law, the duties of my office as Guardian of the person and estate of Olof Zetterlund, an Incompetent Person.

Dora Miller. J. F. Moroney, County Clerk.

Subscribed and sworn to before me, this 23 day of May, 1945. H. M. Davidson, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fol. 22] [Stamp:] Filed Superior Court July 10, 1945. J. F. Moroney, County Clerk. H. L. Doyle, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 243,553

In the Matter of the Guardianship of the Person and Estate of Olof Zetterlund, an Incompetent Person

Petition for Approval of Sale of Personal Property

The petition of Dora Miller respectfully shows:

That she is the regularly appointed and acting guardian of the person and estate of Olof Zetterlund, an incompetent person. That in accordance with the Court order dated May 23, 1945, and signed by the Honorable Newcomb Condee, Judge presiding in Department 25 of the above entitled Court, she has performed or had performed certain duties set forth in said Order, and hereby petitions the Court for the approval of the same.

Harold M. Davidson, attorney for said guardian, went to Miami Beach, Florida, and under proxy, voted the stock held in the name of Olof Zetterlund in the Elsinore Beach Corporation and Halland Land Company, and in conformance with said proxy, represented Olof Zetterlund at a meeting of the stock holders of both corporations, and at a meeting of a Board of Directors of both corporations, and so representing Olof Zetterlund, he, together with the other stock holders settled and compromised a law suit pending [fol. 23] in the Circuit Court in Florida between the members of the Elsinore Beach Corporation. That the minority stock holders were demanding $197,000.00 in said law suit, and the same was compromised for $170,000.00. That in the compromise of said law suit, the minority stock holders confessed judgment in favor of Olof Zetterlund, and upon execution of a mortgage for $170,000.00, the balance of the stock of the Elsinore Beach Corporation, to-wit: 34.6% was to be assigned to the guardian of the person and estate of Olof Zetterlund, and he would be the sole owner of all the stock of the Elsinore Beach Corporation. That the minority stock holders consist of Mr. McGarry and Mrs. Weaver, and they then resigned as directors of said corporation, and James Q. Burdet, Ellen Burdet and Dora Miller were elected as the Board of Directors of the Elsinore Beach Corporation; James Q. Burdet to act as president; Dora Miller to act as vice-president; and Ellen Burdet to act as secretary-treasurer. That thereafter, Harold M. Davidson, representing Olof Zetterlund, the holder of 65.53% of the stock of the Elsinore Beach Corporation, under proxy, then voted at a stock holders meeting, authorizing and directing the Directors of the Elsinore Beach Corporation to enter into a Contract of Sale for approximately 850 acres of vacant land with an ocean frontage of approximately 2,642 feet, and a good portion of said land consisting of swamp land. That said vacant land is all of the assets of the Elsinore Beach Corporation. That said corporation had previously been offered the sum of $650,000.00 for said land. That the Directors sold said land for $700,000.00, with a 10% commission to be paid to Glynn O. Rasco, a real estate broker of Miami Beach, Florida. That said sale was approved by the stockholders of said corporation, upon the following terms:

$350,000.00 cash within sixty (60) days of the date of the sale;

Not less than $20,000.00 nor more than $75,000.00 on principal, plus interest at 4% on the remaining unpaid [fol. 24] balance, at the end of the first year;

Not less than $25,000.00 nor more than $75,000.00 on principal plus interest at 4% on the remaining unpaid balance at the end of the second year;

Not less than $35,000.00 nor more than $75,000.00 on principal plus interest at 4% on the remaining unpaid balance at the end of the third year;

Not less than $35,000.00 nor more than $75,000.00 on principal plus interest at 4% on the remaining unpaid balance at the end of the fourth year;

The entire remaining unpaid balance of principal plus interest at 4% on the remaining unpaid balance at the end of the fifth year.

That from the down-payment of $350,000.00, there is to be paid the sum of $170,000.00 to the minority stock holders under compromise of the law suit, and one-fifth (1/5) of the commission, to-wit: $14,000.00; leaving a balance of $166,000.00 from the down-payment, which sum is to be paid into the hands of the Guardian of the person and estate of Olof Zetterlund, an incompetent person. That thereafter from the payments of principal and interest as set forth hereinbefore, payable on the 1st year, 2nd year, 3rd year and 4th year after the date of contract of sale of said property, from each of said annual payments, there is to be paid a sum of $14,000 as one-fifth (1/5) of the real estate commission on said land. That the total amount of principal from the sale of said land that will be paid to your petitioner herein, as Guardian of the person and estate of Olof Zetterlund, will be $460,000.00, together with accumulated interest.

That after the sale of said property, the only assets so far as known to your petitioner, remaining in the Elsinore Beach Corporation of which Olof Zetterlund will be the sole [fol. 25] owner, will be 10,000 shares no par value stock, and there will be no assets of the Elsinore Beach Corporation securing said stock, and said stock will, so far as known to your petitioner, have no value.

Your petitioner further states that the expense incurred by Harold M. Davidson in making the trip to Florida and in carrying out the former order of this Court and acting on behalf of the Guardian of the person and estate of Olof Zetterlund, an incompetent person, exclusive of attorney fees, amount to $538.50.

Wherefore, your petitioner respectfully requests that the Court make its order approving the acts of your petitioner and the acts of Harold M. Davidson, the attorney representing your petitioner as set forth herein, and make its order approving and authorizing the expenditure of $538.50 by Harold M. Davidson, as his expenses incurred as hereinbefore set forth.

Harold M. Davidson, Attorney for Guardian.

Order

Confirming Acts of Guardian

The petition of Dora Miller, Guardian of the Person and Estate of Olof Zetterlund, an incompetent person, and of Harold M. Davidson, her attorney, for an order approving the acts of Harold M. Davidson, acting under proxy of Dora Miller, as set forth fully in the petition, and for expenses of her attorney incurred in the performance of these services, having been regularly presented to the Court, and the Court having taken testimony, it is ordered, adjudged and decreed that the acts of Dora Miller, as Guardian of the Person and Estate of Olof Zetterlund, an incompetent person, acting by and through her attorney, Harold M. Davidson, in voting the stock held by Olof Zetterlund in the [fol. 26] Elsinore Beach Corporation, a Florida Corporation, as set forth in the petition heretofore presented, and the same is hereby approved.

It is further ordered, adjudged and decreed that the expenditure of $538.50 for expense of Harold M. Davidson, attorney for said Guardian, to Florida and return and necessary expenses while in Florida, be, and the same is hereby approved.

Dated: July 6th, 1945.

Alfred L. Bartlett, Judge.

Approved as to form only. C. Brown.

[fol. 27] State of California,
County of Los Angeles, ss:

Dora Miller, being by me first duly sworn, deposes and says: That she is Guardian of the Person and Estate of Olof Zetterlund in the above entitled matter, that she has read the foregoing Petition for Approval of Sale of Personal Property and knows the contents thereof; and that the same is true of her own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that she believes it to be true.

Dora Miller.

Subscribed and sworn to before me this 22 day of June, 1945. H. M. Davidson, Notary Public in and for the County of Los Angeles, State of California. H. M. Davidson. (Notarial Seal.)

[fol. 28] [Stamp:] Filed Superior Court April 8, 1946. J. F. Moroney, County Clerk. H. L. Doyle, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 243,553

In the Matter of Guardianship of the Person and Estate of OLOF ZETTERLUND, an Incompetent Person

Final Report, Petition for Distribution to Personal Representative, and for Fees

The petition of Dora Miller respectfully shows:

I

That Olof Zetterlund was the principal stock holder in two Florida corporations, to-wit: Halland Land Company and the Elsinore Beach Corporation. That the principal place of business of both Florida corporations was Miami Beach, Florida. That the actual bona fide residence of Olof Zetterlund for over two years had been, and was at the time of his death, San Gabriel, California.

That the assets of the Halland Land Company consisted principally of a three story hotel and store building located in Miami Beach, Florida, which hotel was operated during the winter season of each year by a resident of Miami Beach, Florida, to-wit. James Q. Burdet.

The assets of the Elsinore Beach Corporation consisted principally of vacant real property located in Miami Beach, Florida. The minority stock holders of the Elsinore Beach [fol. 29] Corporation were insisting upon a sale of the assets of the Elsinore Beach Corporation.

Because of the physical inability of Olof Zetterlund, and because it required the presence of some person in Florida to look after his business affairs and to represent him in Court in the partition suit filed by the minority stock holders; and inasmuch as Olof Zetterlund was not physically capable of making the trip to Florida and participating in a number of conferences, discussions and possibly Court appearances in connection with these matters, and inasmuch as your petitioner was of the opinion that unless immediate action was taken to protect his financial interests they would be dissipated, your petitioner filed a Petition for Appointment of Guardian of the Person and Estate of Olof Zetterlund, an incompetent person.

II

That said petition was heard in Department 25 of the above entitled Court on the 23rd day of May, 1945, and the Court granted the petition, and she was appointed the guardian of the person and estate of Olof Zetterlund, an incompetent person, and her bond was set at $450,000.00. That she immediately qualified and has been and was the duly qualified and acting Guardian of the Person and Estate of Olof Zetterlund, an incompetent person, up to the date of his death to-wit: August 21, 1945.

III

That your petitioner received an offer for the purchase of the real property composing the assets of the Elsinore Beach Corporation; that said offer was for $410,000.00, gross, from which expenses of escrow, abstract expenses, and a 10% real estate broker's commission were to be paid. She refused said offer on the ground that it was not a sufficient price for said property. At that time, Olof Zetterlund owned 65.53% of the stock of said corporation, and the gross [fol. 30] amount that he would have received from the sale of said property for $410,000.00, would have been $268,673.00, from which would have been paid his pro rata share, to-wit: 65.53% of a real estate broker's commission, escrow and abstract expenses, and various expenses for the sale of said property.

IV

That thereafter, your petitioner received an offer of $425,000.00, gross, for the purchase of the assets of the Elsinore Beach Corporation, from which would have been paid a 10% real estate broker's commission, plus the ordinary and usual expense of sale, escrow and abstract charges, which offer was refused by your petitioner. Thereafter, your petitioner received another offer to purchase the assets of the Elsinore Beach Corporation, for $450,000.00 gross, which offer she again refused.

The minority stock holders then instituted a partition suit in the Florida Courts requesting the Court to partition the real property so that the minority stock holders could sell their portion of the real property as in their opinion, the offer of $450,000.00 was a sufficient price for said real property.

V

That your petitioner was advised and believed that $450,000.00 was not a fair price for said real property at the then present market, and employed Harold M. Davidson, an attorney in Alhambra, California, to represent the interests of Olof Zetterlund in opposing said partition suit, and instructed Harold M. Davidson, who had previously been retained by Olof Zetterlund, to employ counsel in Florida, and he did employ Glynn O. Rasco, a duly licensed and practicing attorney in Miami Beach, Florida, to take any and all steps necessary to oppose the partition suit and various and sundry documents were filed with the Court, and an injunction requested to prohibit a partition suit, inasmuch as such a suit would detract from the value of the [fol. 31] property consisting of 2300 feet of ocean frontage, and approximately 850 acres of land, a good portion of which was covered by swamp. Your petitioner had been advised that ocean frontage in the vicinity of the land owned by the Elsinore Beach Corporation, had been sold for $225.00 a front foot, and she felt that inasmuch as there were two or three different people attempting to purchase this property, by delaying any Court action, she could obtain that price for the frontage owned by Olof Zetterlund and the Elsinore Beach Corporation.

VI

Thereafter, your petitioner received an offer of $500,000.00 for said property, which offer was refused, and subsequent thereto, received an offer of $525,000.00 for said land, which offer your petitioner refused.

Subsequently, your petitioner received an offer of $600,000.00 for said land, which offer she refused.

On or about the 12th day of May, 1945, your petitioner was offered $650,000.00 for said property. Your petitioner was then advised by her counsel in Florida, and the business manager for the Elsinore Beach Corporation that due to the then present market conditions and the status of the war, in their opinion, the property should be sold for the price of $650,000.00 gross.

VII

Your petitioner then filed a petition in the Superior Court to be appointed the guardian of the Person and Estate of Olof Zetterlund, and requested that the Court instruct her attorney to proceed to Florida to compromise and settle the minority stock holders' partition suit, to sell the interest of Olof Zetterlund in the assets of the Elsinore Beach Corporation, and to take any action he saw fit relative to the protection of the property of the Halland Land Company, 98% of which stock was owned by Olof Zetterlund. [fol. 32] She further petitioned the Court that your petitioner pay the travelling expense of Harold M. Davidson, not to exceed the sum of $700.00.

The Court made its order authorizing your petitioner's attorney, Harold M. Davidson, to go to Florida and that your petitioner delegate to him such powers as are required by the Florida statutes to permit him to represent Olof Zetterlund at a meeting of stock holders of the Elsinore Beach Corporation and the Halland Land Company, to vote the stock owned by Olof Zetterlund; perform any other duties necessary for him to perform to complete the sale of the assets of the Elsinore Beach Corporation, and from said sale to accumulate any sum of money due Olof Zetterlund; to sign any and all papers necessary to complete the sale of the assets of the Elsinore Beach Corporation and the interest therein of Olof Zetterlund; and further authorized the expenditure of $700.00 for travelling expenses.

VIII

On or about the 3rd day of June, 1945, Harold M. Davidson proceeded to Florida via American Air Lines, and upon his arrival in Miami Beach, Florida, immediately called a meeting of the stock holders of the Elsinore Beach Corporation, and at that time made a proposal on behalf of Olof Zetterlund to the minority stock holders to compromise and settle the minority stock holders' partition suit previously filed in the Florida Courts. That various meetings were had between Harold M. Davidson, Glynn O. Rasco, Florida attorney representing Olof Zetterlund, and the minority stock holders. The minority stock holders were insisting upon receiving 34.47% of the offered price of $650,000.00 for a compromise settlement of the partition suit, and the sum demanded by the minority stock holders amounted to $224,000.00. It was pointed out to the minority stock holders that at the time they filed the partition suit, they felt the property should be sold for a gross price of $450,000.00, and [fol. 33] their portion, 34.47% of $450,000.00, would amount to approximately $155,000.00. The minority stock holders stated they knew the property could be sold for $650,000.00, and felt they were entitled to receive 34.47% of the sale price of $650,000.00. Harold M. Davidson with Glynn O. Rasco insisted that inasmuch as the minority stock holders had filed their partition suit when the price offered for the property was $450,000.00, they were at that time and should now be willing to accept their pro rata portion of that price. After several conferences, it was finally agreed that the minority stock holders would assign all their stock to Olof Zetterlund and would confess judgment in the partition suit upon the payment to them of $170,000.00, and they would pay their own attorney fees. This was a saving to the estate of Olof Zetterlund of approximately $55,000.00, and about $20.000.00 attorney fees, and Harold M. Davidson and Glynn O. Rasco attorneys representing Olof Zetterlund, consented to said compromise settlement. That additional stock holders meetings were held, authorizing the directors of the Elsinore Beach Corporation to complete the transaction as above outlined. The directors of the Elsinore Beach Corporation then held their meeting, represented by Harold M. Davidson under proxy for Dora Miller, the Guardian of the person and estate of Olof Zetterlund, and 34.47% of the stock of the Elsinore Beach Corporation was ordered transferred to Dora Miller, Guardian of the Person and Estate of Olof Zetterlund, upon the payment to the minority stock holders of $170,000.00, in cash.

IX

Harold M. Davidson and Glynn O. Rasco then had numerous conferences with parties wishing to purchase the land owned by the Elsinore Beach Corporation, and finally entered into an agreement to sell said land to Samuel Friedland for $700,000.00, and the purchaser was to accept the land in its then present condition, to-wit, the abstract of title showed that a portion of the land was held by the Elsinore [fol. 34] Beach Corporation under warranty deed; some parcels had been acquired through tax title only in the name of the Elsinore Beach Corporation, and other parcels had been obtained by Olof Zetterlund in his individual name under tax title. The seller of the land was to pay $70,000.00 real estate broker's commission, and title and abstract expenses and other expense of sale. Harold M. Davidson then returned to California and made a report to the Court under a Petition for Approval of Sale of Personal Property, to-wit, stock in the Elsinore Beach Corporation, and the Court issued its Order confirming the acts of the Guardian and the expenditure of $538.50 instead of $700.00 for the expense of Harold M. Davidson to Florida and return.

X

An inventory has been filed by your petitioner, based upon reports of the Florida agent of Olof Zetterlund, and although an appraiser has been appointed, no appraisement has actually been made of the assets of Olof Zetterlund, an incompetent person, but all of the assets which came into the hands of your petitioner, other than certain cash spent for the care and support of Olof Zetterlund as authorized by Court Order, still remains in the hands of your petitioner as Guardian of the Person and Estate of Olof Zetterlund. At the time of the appointment of your petitioner as Guardian, your petitioner was sent an accounting of the assets of Olof Zetterlund; said statement was made by James Q. Burdet, the Florida agent of Olof Zetterlund, the person having charge of his accounts, and in accordance with said statement and information in possession of your petitioner, the assets of Olof Zetterlund at the time of said appointment consisted of the following:

Bank of America, Alhambra Branch	$ 2,990.41
East River Savings Bank of N.Y.	1,160.94
Excelsior Savings Bank of N.Y.	1,207.67
Bowery Savings Bank of N.Y.	2,153.79
Greenwich Savings Bank of N.Y.	1,015.90
First National Bank of Miami Beach, Florida	1,516.15
Total Bank Accounts	$ 10,044.86

[fol. 35] That in addition thereto, there were certain other assets consisting of the following:

Skandianaviska Banken, Stokholm, Sweden, as per statement	KR 29,488.11	
Svenska Handelsbanken, Stokholm, Sweden, as per last statement	KR 11,824.49	
Swedish money	KR 41,312.60, or—	10,328.15
200 shares stock Swedish American Lines,	KR 20,000.00, or—	5,000.00
6,553 shares no par value stock Elsinore Beach Corporation, a Florida corporation, estimated value		268,673.00
198 shares no par value stock, Halland Land Company, estimated value		389,378.22
Personal effects of Olof Zetterlund in his home in San Gabriel, California		450.00
Personal effects, office furniture, etc., in Miami Beach, Florida		1,500.00
Total Estimated Value		$685,374.23

That in addition to $10,044.86 bank accounts, the following was received:	$ 10,044.86
Earnings of the Halland Land Company sent to your petitioner in the sum of	3,000.00
Earnings of the Halland Land Company placed in the Miami Beach bank account for the use of Olof Zetterlund	2,538.36
Total cash received by or under the control of your petitioner for the use of Olof Zetterlund	$ 15,583.22

The Court made its order authorizing your petitioner to use for the care and support of Olof Zetterlund the sum of $1,000.00 per month. Your petitioner did use this sum for a period of three months. Due to the unexpected illness and death of Olof Zetterlund, it was necessary for her to spend an additional sum of $651.38 for the use and benefit of Olof Zetterlund, so that the entire amount used by your petitioner for the care and [fol. 36] support of Olof Zetterlund from the date of her appointment as guardian to the date of his death, was .... $ 3,651.38

Recapitulation

Total cash received by or under the control of your petitioner for the use of Olof Zetterlund	$ 15,583.22
Sum spent by petitioner during guardianship for care and support of Olof Zetterlund	3,651.38
	$ 11,931.84

That in addition thereto, it was necessary for your petitioner to pay for the burial and funeral expenses of Olof Zetterlund, which money was required to be paid in advance and should be allowed the Guardian as a proper charge against the estate of Olof Zetterlund, as follows:

Pierce Brothers, funeral expenses, including chapel, funeral and cremation	$ 950.93	
Charles Belmont, conducting of services for Olof Zetterlund, including his transportation from the East	300.00	
Flowers and other miscellaneous expenses necessary at the funeral and burial	295.40	
	$1,546.33	1,546.33
		$ 10,385.51

In addition thereto, your petitioner paid the following costs of Guardianship bond premium	$2,000.00	
Travelling expenses of Harold M. Davidson to Florida and return	538.50	
	$2,538.50	2,538.50
		$ 7,847.01

[fol. 37] In addition thereto, Harold M. Davidson paid for and advanced for the Guardianship matter the following expenses:

File Petition	$10.50	
Certified and exemplified copies petition and orders	8.71	
Long distance telephone and telegrams to Florida	75.00	
Transcript testimony	3.00	
	$97.21	$ 7,749.80

Your petitioner has received an accounting from James Q. Burdet, dated August 31, 1945, showing the assets on hand in the estate of Olof Zetterlund and his opinion of their estimated value, with exception of the Alhambra bank account, and basing her statement upon that information, states that she has on hand for the account of Olof Zetterlund, the following bank accounts:

Bank of America, Alhambra Branch	$ 695.35	
East River Savings Bank of N.Y.	1,160.94	
Excelsior Savings Bank of N.Y.	1,207.67	
Bowery Savings Bank of N.Y.	2,153.79	
Greenwich Savings Bank of N.Y.	1,015.90	
1st National Bank of Miami Beach	1,516.15	
	$7,749.80	$ 7,749.80

In addition thereto, the assets of Olof Zetterlund, at the time of his death were:

Skandianaviska Banken, Stokholm, Sweden,	KR 39,799.38, or—	$ 7,449.84
Svenska Handelsbanken, Stokholm, Sweden	KR 11,363.91, or—	2,840.98
198 shares no par value common stock, Halland Land Company, a Florida corporation, estimated value		425,204.55
[fol. 38] 10,000 shares no par value stock, Elsinore Beach Corporation, a Florida Corporation, estimated value $700,000.00 gross, net		530,000.00

200 shares stock Swedish American Lines, KR 2,000.00, or—	5,000.00
Personal effects in San Gabriel, California....	450.00
Office furniture and personal effects in Miami Beach, Florida	1,500.00
Estimated value date of death	$980,195.17

That all of the assets above described, with the exception of the bank account in the Alhambra Branch Bank of America, and the personal effects situate in San Gabriel, California, are in possession of, or under the control of James Q. Burdet, and are physically situate in Miami Beach, Florida.

That your petitioner and Harold M. Davidson have been appointed executors of the Last Will and Testament and Codicil of Olof Zetterlund, deceased, in Los Angeles County, California, and all of said assets should be distributed to said co-executors.

XI

That your petitioner is entitled to a reasonable fee for acting as Guardian of Olof Zetterlund, and is entitled to an extraordinary fee for services performed by her in preserving and increasing the assets of Olof Zetterlund and the management of his affairs and that of his estate. That petitioner's attorney, Harold M. Davidson, is entitled to a reasonable fee for serving as the attorney for the guardian in said guardianship proceeding, and an extraordinary fee for services rendered by him, both in California and in Florida, and adding to and bringing into the estate a large sum of money. That through the efforts of your petitioner [fol. 39] and her attorney, the assets of the estate have been increased in the following manner:

1. Olof Zetterlund's portion of the first purchase price offered for the Florida real property, $268,673.00, gross
   Olof Zetterlund's share, [illegible] of the actual price for which said property was sold, through the efforts of your petitioner and her attorney, [illegible], gross
   Increase brought into the estate .... [illegible]

2. The portion to which the minority stock holders were entitled on the sale price, to-wit, 34.47% of $700,000.00, is $241.290.00
The amount partition suit was compromised for is $170,000.00
Increase brought into the estate....... 71,290.00

$261,327.00

In addition thereto, through the efforts of your petitioner's attorney by going to Florida and having a series of consultations, stock holders and directors meetings with the minority stock holders, a stipulated judgment was entered in the Florida partition suit, saving the estate, as your petitioner is informed and believes, not less than 20,000.00

Total increase brought to estate..........$281,327.00

That through the efforts of your petitioner and her attorney, the value of the assets of the estate were increased $281,327.00. That your petitioner believes a reasonable fee to be allowed her for the work, effort and time expended for acting as guardian of the person and estate of Olof Zetterlund, and for her efforts in bringing the increased assets into the estate, should be allowed a fee of $25,000.00.

In order for Harold M. Davidson to serve the estate, it was necessary for him to go to Florida and be absent from [fol. 40] his office for ten days on his first trip. It was necessary for him, while in Florida, to have various conferences, consultations, stock holders and directors meetings of both corporations, to view the property to be sold, to check over numerous abstracts of title and tax titles to the various parcels of property, to hold conferences with purchasers, to enter into a contract of sale with Samuel Friedland for the purchase of said property for $700,000.00 gross. During the time he was absent from his office, there were various Court appearances and cases which had been set for hearing in the Superior Court of Los Angeles County, which he was unable to take care of, and it was necessary for him to employ other counsel, to-wit, William J. Clark and V. A. Morgan, to properly represent his clients in these actions. Had he not proceeded to Florida, the estate of

Olof Zetterlund would have suffered greatly, and through his efforts there was brought into the estate of Olof Zetterlund an additional amount of approximately $281,327.00. He attempted to obtain an accounting of the assets of Olof Zetterlund and was unable to do so by mail or telegraph or telephone. It was necessary for him to again go to Florida in order to obtain proper information relative to the assets of Olof Zetterlund and to attempt to complete the sale of the property, which sale had not been closed and was still pending. Due to the fact that the war had ended, it was his opinion and the opinion of his advisors in Florida, that the sale should be consummated immediately, and if the same was not consummated, the property would not have sold for the price obtained. On this second trip, Harold M. Davidson was absent from his office seven days, and it was necessary for him to again employ other counsel to represent his clients in certain Court actions. Your petitioner believes that a reasonable fee to be allowed the attorney for the guardian, based upon the time and effort spent and the results obtained, and especially in view of [fol. 41] the fact that the assets of the estate were increased not less than 50%, and in her opinion, not less than $281,000.00 has been added to the assets of the estate, and he should be allowed a fee of $75,000.00.

WHEREFORE, your petitioner prays that a date be set for hearing on this final report and petition for distribution and fees; that the proper notices be given, if any; that the Court make its order approving the final report of your petitioner as Guardian of the Person and Estate of Olof Zetterlund; that the Court make its further order approving the extra expenditure of $651.38 for the care and support of Olof Zetterlund during his lifetime; approve the expenditure of the advancement of $1,546.23 for the funeral and burial expenses of Olof Zetterlund, and authorize your petitioner to pay Harold M. Davidson the sum of $97.21 for costs advanced in the guardianship proceeding.

That the Court make its further order authorizing a fee of $25,000.00 to the guardian of Olof Zetterlund for services performed, and a further fee of $75,000.00 to Harold M. Davidson, attorney for the guardian of Olof Zetterlund, for services performed. That your petitioner be ordered to distribute to the executors of the Last Will and Testament of Olof Zetterlund all of the assets remaining in the hands of your petitioner, and that she be discharged from any further duties as guardian.

Respectfully submitted. Harold M. Davidson, attorney for Petitioner, Dora Miller.

[fol. 42] STATE OF CALIFORNIA,
County of Los Angeles, ss.

DORA MILLER being by me first duly sworn, deposes and says: That she is Guardian of the Person and Estate of Olof Zetterlund in the foregoing and above entitled action; that she has read the foregoing Final Report, Petition for Distribution to Personal Representative, and for Fees and knows the contents thereof; and that the same is true of her own knowledge, except as to the matters which are therein stated upon her information or belief, and as to those matters she believes it to be true.

Dora Miller.

Subscribed and sworn to before me this 29th day of March, 1946. H. M. Davidson, Notary Public in and for said County and State. (Seal.)

[fol. 42a] [Stamp:] Filed April 10, 1946. J. F. Moroney, County Clerk. By E. Jones, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 243553

In the Matter of the Estate and Guardianship of OLOF ZETTERLUND, Incompetent

Affidavit of Posting Notice of Hearing

Final Report of Guardian & Petition for Distribution & Allowance of Fees

STATE OF CALIFORNIA,
County of Los Angeles, ss.

E. McNeely being first duly sworn, says that on April 10, 1946 at the request of the Clerk of the Clerk of the Superior

Court of the State of California, in and for the County of Los Angeles, he posted a notice (a copy of which notice appears on the reverse side hereof) at the courthouse in the said County of Los Angeles.

E. McNeely.

Subscribed and sworn to before me April 10, 1946. J. F. Moroney, County Clerk, by E. Jones, Deputy.

[fol. 42b] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 243553

In the Matter of the Estate and Guardianship of OLOF ZETTERLUND, Incompetent

Notice of Hearing

Final Report of Guardian & Petition for Distribution & Allowance of Fees

Notice is hereby given that Dora Miller, as guardian of the above-entitled estate, has filed with the Clerk of this Court a petition for order approving final report, authorizing distribution and allowing fees to which reference is hereby made for further particulars; and that the hearing of the same has been set for April 29, 1946, at 9:30 o'clock A.M., in Department 25 of the Superior Court of the State of California, in and for the County of Los Angeles. All persons interested are hereby notified to appear at the time and place mentioned in this notice and show cause, if any they have, why the order should not be made.

Dated April 10, 1946.

J. F. Moroney, County Clerk, by I. Daniels, Deputy.

[fol. 43] [Stamp:] Filed Superior Court, April 17, 1946. J. F. Moroney, County Clerk. By H. L. Doyle, Deputy

Notice to Attorneys: File Copy of Inventory & Appraisement for Transmittal to County Assessor. Sections 600 and 1550 Probate Code.

In the Superior Court of the State of California in and for the County of Los Angeles

No. 243,553

In the Matter of the Estate of and Guardianship Olof Zetterlund an Incompetent Person

Inventory

I, J. F. Moroney, County Clerk of the County of Los Angeles, and Clerk of the Superior Court thereof, do hereby certify that Joseph L. Pedrotti, 225 Wilcox Bldg., Los Angeles, was duly appointed to appraise the estate of said deceased, by order of said Superior Court.

Witness my hand and the seal of the said Superior Court, this 12 day of Apr., 1946.

J. F. Moroney, County Clerk, by K. Clark, Deputy.

The Appointment of Appraisers Must First Be Certified to by the Clerk Before Appraisement Is Made.

State of California,
County of Los Angeles, ss:

The undersigned, being duly sworn, deposes and says: that he will truly, honestly and impartially appraise the property of said estate which shall be exhibited to him, according to the best of his knowledge and ability.

[fol. 44] [Stamp:] Filed Superior Court, April 27, 1946. J. F. Moroney, County Clerk. By H. L. Doyle, Deputy

In the Superior Court of the State of California in and for the County of Los Angeles

No. 243553

In re Guardianship of Olof Zetterlund, an Incompetent Person

Notice

To Dora Miller, as Guardian of the Person and Estate of Olof Zetterlund, an incompetent person, and to her attorney, Harold M. Davidson, 317 West Main Street, Alhambra, California:

Please Take Notice that the undersigned, as attorneys for Ernfrid E. Rensta, a nephew of the said Olof Zetterlund, desire special notice of the filing or commencing of any or all of the following:

1. Petitions for the sale, lease or mortgage or confirmation of sale of any property of the ward.
2. Accounts.
3. Application for removal of the ward's property to a foreign jurisdiction.
4. Petition for partition of any property of the ward.
5. Petitions for allowance of any nature, payable from the ward's estate.
6. Petitions for the investment of funds of the Estate.
7. Proceedings for the removal, suspension or discharge of the guardian or final determination of the Estate.

[fol. 45] The Post Office address of the undersigned is 530 West Sixth Street, Los Angeles 14, California.

Dated: April 26, 1946.

O'Connor & O'Connor, by Edward J. O'Connor.

[fol. 46] State of California,
County of Los Angeles, ss:

Hazel Britton, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the county of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above entitled action; that affiant's business address is 530 West Sixth Street, Los Angeles 14, California; that on the 26th day of April, 1946, affiant served the within Notice on the Guardian in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said Guardian at the office address of said attorney, as follows: * "Harold M. Davidson, Esq., 317 West Main Street, Alhambra, California"; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

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* Here quote from envelope name and address of addressee.

That there is delivery service by United States mail at the place so addressed or ** there is a regular communication by mail between the place of mailing and the place so addressed.

Hazel Britton.

Subscribed and sworn to before me this 26th day of April, 1946. Helen L. Cure, Notary Public in and for the County of Los Angeles, State of California. My Commission Expires May 3, 1949. (Seal.)

[fol. 47] [Stamp:] Filed Superior Court, May 2, 1946. J. F. Moroney, County Clerk. By H. L. Doyle, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 243553

In Re Guardianship of OLOF ZETTERLUND, an Incompetent Person

Appearance Praecipe

To the Clerk of Above-Entitled Court:

Please enter our appearance as attorneys for Ernfrid E. Rensta, contestant, in the above-entitled matter.

O'Connor & O'Connor, by Edward J. O'Connor, Attorneys for Ernfrid E. Rensta, Contestant.

[fol. 48] STATE OF CALIFORNIA,
County of Los Angeles, ss:

Hazel Britton, being first sworn, says: That affiant is a citizen of the United States and a resident of the county of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above entitled action; that affiant's business address is 530 West Sixth Street, Los Angeles 14, California; that on the 26th day of April, 1946, affiant served the within Appearance Praecipe on the Guardian in said action, by placing a true copy thereof in an

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** When the letter is addressed to a post office other than "Los Angeles" strike out "and"; when addressed to "Los Angeles," strike out "or."

envelope addressed to the attorney of record for said Guardian at the office address of said attorney, as follows: * "Harold M. Davidson, Esq., 317 West Main Street, Alhambra, California"; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorney—for the person—by and for whom said service was made.

That there is delivery service by United States mail at the plase so addressed or ** there is a regular communication by mail between the place of mailing and the place so addressed.

Hazel Britton.

Subscribed and sworn to before me this 26th day of April, 1946. Helen L. Cure, Notary Public in and for the County of Los Angeles, State of California. My Commission Expires May 3, 1949. (Seal.)

[fols. 49-52] No. 243553

In the Matter of the Guardianship of the Person and Estate of Olof Zetterlund, An Incompetent Person

State of California,
County of Los Angeles, ss.:

I, J. F. Moroney, County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, do hereby certify and attest the foregoing to be a full, true and correct copy of the original Petition for Appointment of Guardian with copy of Power of Attorney attached; Citation; Letters of Guardianship; Order Appointing Guardian of the Person and Estate of Olof Zetterlund, and authorizing certain Expenditures to be made and duties performed; physician's Certificate; Petition for Approval of Sale of Personal Property; Final Report, Petition for Distribution to personal representative, and for Fees; Affidavit of Posting; Inventory; Appearance Praecipe; Notice; Bond; on file or of record in my office, and that I have carefully compared the same with the original. I further certify that said Letters have not been revoked and are in full force and effect on this date.

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* Here quote from envelope name and address of addressee.

** When the letter is addressed to a post office other than "Los Angeles" strike out "and"; when addressed to "Los Angeles," strike out "or."

In witness whereof, I have hereunto set my hand and annexed the seal of the Superior Court of the State of California, in and for the County of Los Angeles, this 30th day of September, 1946.

J. F. Moroney, County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles. (Seal.)

STATE OF CALIFORNIA,
County of Los Angeles, ss.:

I, Dudley S. Valentine, Presiding Judge of the Superior Court of the State of California, in and for the County of Los Angeles, do hereby certify that J. F. Moroney is County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles (which Court is a court of record, having a seal); that the signature to the foregoing certificate and attestation is the genuine signature of the said J. F. Moroney as such officer; that the seal annexed thereto is the seal of said Superior Court; that said J. F. Moroney as such Clerk is the legal custodian of the original records or documents described and referred to in the foregoing certificate, is the proper officer to execute the said certificate and attestation, and such attestation is in due form according to the laws of the State of California.

In witness whereof, I have hereunto set my hand in my official character of such Presiding Judge, at the City of Los Angeles, County and State aforesaid, this 30th day of September, 1946.

Dudley S. Valentine, Presiding Judge of the Superior Court of the State of California, in and for the County of Los Angeles. (Seal.)

STATE OF CALIFORNIA,
County of Los Angeles, ss.:

I, J. F. Moroney, County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles (which Court is a court of record, having a seal which is annexed hereto), do hereby certify that Dudley S. Valentine whose name is subscribed to the foregoing certificate of due attestation was, at the time of signing the same, Presiding Judge of the Superior Court aforesaid and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further certify that the signature of the Judge above named to the said certificate of due attestation is genuine.

In witness whereof, I have hereunto set my hand and annexed the seal of the Superior Court, at my office in said County, this 30 day of September, 1946.

J. F. Moroney, County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles. (Seal.)

[fol. 83]

Nelson's Exhibits 2 and 3—Domiciliary Probate Proceedings of Olof Zetterlund, Deceased, Pending Dade County, Florida.

IN THE COUNTY JUDGE'S COURT IN AND FOR DADE COUNTY, FLORIDA

Probate No. 16,650

In re: Estate of OLOF ZETTERLUND, Deceased

Transcript of Portions of the Record in the Original Administration Proceedings Instituted on August 30, 1945, in the County Judge's Court in and for Dade County, Florida, Probate No. 16,650

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[fol. 86] 1

Be it remembered, that on August 30, 1945, the Honorable W. F. Blanton, County Judge of the County Judge's Court, in and for Dade County, Florida, made and entered an order, recorded on the 30th day of August, 1945, in Record of Curatorship, Book 211, at page 2, appointing a Curator of the Estate of Olof Zetterlund, Deceased, being in the words and figures following:

(Caption and Style Omitted)

Order Appointing Curator

The petition of Ellen W. Burdet seeking the appointment of a curator upon the estate of Olof Zetterlund, deceased, who died testate while a resident and citizen of Dade County, Florida, coming on to be heard, and it appearing to the Court that the appointment of a curator is necessary and that James Q. Burdet, who has managed the property of the deceased for the past twelve years, be appointed curator of the said estate until further order of this Court.

It is, therefore, ordered and adjudged that James Q. Burdet be and he is hereby appointed curator of the estate of Olof Zetterlund, deceased; upon his taking the oath and giving bond to be approved by this Court in the sum of $10,000.00, let letters of curatorship upon the said estate be issued to the said James Q. Burdet.

Done and ordered this 30th day of August, 1945.

(Sgd.) W. F. Blanton, County Judge. (C. J. Seal.)

Thereafter, on August 30, 1945, the said James Q. Burdet filed his oath as Curator, and the required surety bond. which was approved by the Judge of this Court; and on August 30, 1945, letters of Curatorship were issued to said James Q. Burdet,

[fol. 87] 2

On September 6, 1945, James Q. Burdet filed in this cause his petition for the probate of the Last Will and Testament of Olof Zetterlund, Deceased, bearing date June 9, 1937, which original Last Will and Testament was lodged in this

Court, said petition being in the words and figures following:

(Caption and Style Omitted)

Petition for Probate of Will

To the Honorable W. F. Blanton, Judge of Said Court:

Comes now your petitioner, James Q. Burdet, whose residence is 214 6th Street, Miami Beach, Dade County, Florida, and respectfully shows to this Honorable Court.

First: That Olof Zetterlund died at Los Angeles, California, on the 21st day of August, A. D., 1945, and at the time of his death he was a resident of Dade County, Florida, and was approximately eighty-five years of age; and at the time of his death was seized and possessed of a certain estate, situate and being in Dade and Broward Counties, Florida, which to the best of petitioner's knowledge consists of real estate situate in Dade and Broward Counties, Florida, and personal property described as stock in the Elsinore Beach Corporation and the Halland Land Company, all of which are of the approximate value of $750,000.00.

Second: That the surviving heirs at law of the said decedent known to your petitioner are as set forth in the [fol. 88] petition of Ellen W. Burdet, and the Will of the decedent, filed heretofore in this Court.

Third: That said decedent died leaving a last will and testament, dated the 9th day of June, A. D. 1937, which said instrument was published and declared by the said decedent to be his Last Will and Testament, when he, the said decedent, was at least eighteen years of age, in the presence of E. L. Lockhart and P. A. Williams as attesting witnesses and in and by said instrument, a nephew Samuel Nelson of Maplewood, New Jersey and Arvid Ericson of Cleveland, Ohio, were appointed Executors.

Fourth: That there is a serious question and great difficulty in determining who is legally qualified to act as Executor or Executors under said instrument and your petitioner requests this Honorable Court to appoint an Executor, Executrix or Administrator, C. T. A., in accordance with the laws and interpretations thereof of the State of Florida;

Fifth: Your petitioner further alleges that he has been the business manager of Olof Zetterlund, the deceased, for a number of years and at this time is more familiar with said decedent's estate and the properties involved therein than any other person; that he is the only legal representative of the said decedent in the State of Florida, having been appointed by this Honorable Court as Curator on the 30th day of August, 1945; and to the best of his knowledge and belief there are no heirs of the deceased within the State of Florida and the only beneficiary under the said Will in [fol. 89] the State of Florida is Ellen W. Burdet who resides in Miami Beach, Dade County, Florida.

Sixth: Your petitioner further alleges, on information and belief, that a paper writing which has heretofore been presented to this Honorable Court for probate upon the petition of Ellen W. Burdet, which was propounded for probate and record, was and is the Last Will and Testament of said decedent and was properly attested and signed by the said decedent in the presence of witnesses and in the presence of each other, and is the Last Will and Testament of the said decedent.

Seventh: Your petitioner is of the opinion that it is his duty as having been business manager for the decedent personally and business manager of the Halland Land Company, a Florida Corporation, and the Elsinore Beach Corporation, a Florida Corporation, being corporations of which the estate now owns approximately 95% of the stock evidenced by stock certificates which are now in the State of Florida and in the possession of your petitioner as curator, and knowing of his own personal knowledge from the desires of the decedent and from information he has obtained that the decedent was a resident of the State of Florida and has at all times considered his domicile within the State of Florida and that for the benefit of the estate the Will should be probated within the State of Florida;

[fol. 90] Wherefore, your petitioner prays that the said paper writing heretofore propounded for probate in that certain petition filed by Ellen W. Burdet, be admitted to probate and record as and for the Last Will and Testament of the said decedent and that this Honorable Court appoint the Executors named in the said instrument as Executors of the said estate if and provided they can qualify as such and that in the event the said Executors named in the Will cannot serve, then this Honorable Court appoint an Administrator or Administrators, C. T. A., in accordance with the laws of the State of Florida.

And your petitioner will ever pray, etc.

(Sgd) James Q. Burdet.

(Sgd) Glynn O. Rasco, Attorney for Petitioner, 835 Lincoln Road, Miami Beach, Florida, 5-4036.

State of Florida,
County of Dade, ss:

The above named James Q. Burdet, being by me duly sworn, says that the foregoing petition by him subscribed is true.

(Sgd) L. B. Southerland, Notary Public, State of Florida, at large. My commission expires Feb. 17, 1947.

(N. P. Seal)

[fol. 91] 3

On September 6, 1945, consequent upon said petition filed September 6, 1945, the Judge of this Court made and entered his order admitting to probate the Last Will and Testament of Olof Zetterlund, Deceased, bearing date June 9, 1937, which order was recorded in Book of Wills, Volume 122, page 32, being in the words and figures following:

(Caption and Style Omitted)

Order Admitting Will

By the County Judge of said County:

The instrument presented by Glynn O. Rasco, attorney, as and for the Last Will and Testament of Olof Zetterlund, deceased, having been duly established by the sworn testimony of E. L. Lockhart, subscribing and attesting witnesses thereto, as being the true last Will and Testament of the said decedent and no objection being made to the probate thereof, and it having been made to appear to the County Judge of said County by due proof that the said decedent died on the 21st day of August, A. D. 1945,

It is therefore ordered, adjudged and decreed that the said Last Will and Testament, bearing date the 9th day of June, A. D., 1937, and attested by E. L. Lockhart and P. A. Williams, as subscribing and attesting witnesses thereto be, and the same is hereby admitted to probate according to law, as and for the true Last Will and Testament of said decedent, and that the said Will, together with the petitions filed by Ellen W. Burdet, a legatee mentioned in said [fol. 92] instrument, and James Q. Burdet, heretofore appointed Curator for said decedent's estate by this court, be duly recorded in the Book of Wills, and that the cost of recording same be taxed as costs against the estate.

(The following is a penned notation:)

> That the appointment of a personal representative of said estate be held in abeyance until the further order of court. WFB

Given under my hand and seal at Miami, in said County and State, this 6th day of September A. D. 1945.

(Sgd) W. F. Blanton, County Judge

(C. J. Seal)

[fol. 93] 4

> That the last will and testament of Olof Zetterlund, Deceased, bearing date June 9, 1937, the original of which was lodged in this Court on August 30, 1945, and admitted to probate by the aforesaid order bearing date September 6, 1945, is in words and figures as follows:

I, Olof Zetterlund, a citizen of Dade County, Florida, being of sound mind and memory, do hereby make, publish and declare this my last will and testament, hereby revoking and annulling all former wills by me made, in manner following, that is to say:

First—I desire that my executors hereinafter named, shall pay out of my estate all my just debts and funeral expenses without delay after my decease.

Second—I give and bequeath to my brother Carl, brother Gustaf, and sister Karin of Chicago, all my household goods, jewelry, library, personal clothing, and automobile, etc. to use, distribute or sell, according to their pleasure.

Third—I give and bequeath to each of my brother Carl, brother Gustaf, and sister Karin Two Thousand.00 dollars, ($2000.00) to each of them.

Fourth—I give and bequeath to my faithful housekeeper, Miss Dora Miller, Nine Thousand.00 dollars, ($9,000.00).

Fifth—I give and bequeath to Mrs. Ellen Burdet, cashier in my hotel, for faithful service, Nine Thousand.00 dollars, ($9,000.00).

Sixth—I give and bequeath to my niece, Augusta Zetterlund, of Arvika, Sweden, Five Hundred.00 dollars ($500.00).

Seventh—I give and bequeath to Theodore Zetterlund of Milwaukee, United States, Five Hundred.00 dollars, [fol. 94] ($500.00).

Eighth—I give and bequeath to my sister Britta, Arvika, Sweden, Ten Hundred.00 dollars, ($1000.00).

Ninth—I give and bequeath to my brother Johannes, Amotfors, Sweden, Ten Hundred.00 dollars, ($1000.00).

Tenth—I give and bequeath to my niece Hulda Zetterlund, Kollstad, Sweden, Five Hundred.00 dollars, ($500.00).

Eleventh—I give and bequeath to my nephew Gunard Zetterlund, Arvika, Sweden, Ten Hundred.00 dollars, ($1000.00).

Twelfth—I give and bequeath to my niece Inga Zetterlund, Arvika, Sweden, Ten Hundred.00 dollars, ($1000.00).

1

Thirteenth—All the rest of my estate, such as real estate, residue and remainder of my personal estate, goods and chattels of whatever nature or kind it may be, and after monies realized from the same, except what is already disposed of and described above under this will, shall be divided into twenty-seven (27) parts and I give and bequeath one part of the twenty-seven (27) parts to each of my relatives described as follows:

Fourteenth—I give and bequeath to my sister Britta and brother Johannes one part of the twenty-seven (27) parts to each of them. In the event of that anyone of them shall die before I am deceased their children shell inherit their share.

Fifteenth—I give and bequeath to my brother Carl, brother Gustaf, and sister Karin one part of the twenty-seven (27) parts to each of them.

Sixteenth—I give and bequeath to my brother Johanne's children, namely, Albert, David, Hulda, Signe, Gustaf and Carl one part of the twenty-seven (27) parts to each of them.

Seventeenth—I give and bequeath to my sister Britta's children, namely, Ruth, Naime, Hanna, Sara, Gustaf and Enfrid one part of the twenty-seven (27) parts to each of them.

Eighteenth—I give and bequeath to my sister Kajsa's children (Kajsa is now deceased) namely, Samuel, Paul, Hanna, Ester, Lydia and Constance one part of the twenty-seven (27) parts to each of them.

Nineteenth—I give and bequeath to my brother Eric's children, (Eric is now deceased) namely, Hulda, Maria, Paul and John one part of the twenty-seven (27) parts to each of them.

Twentieth—At the present my estate consists principally of land and improved real estate and a hotel, and it is my desire that the executors of my last will and testament shall not sacrifice too much of its value in order to convert the same into money.

[fol. 95] Twenty-first—Lastly: I hereby nominate, constitute and appoint my nephew Samuel Nelson of Maplewood, New Jersey; and Arvid Ericson of Toledo, Ohio, the executors of this, my last will and testament, hereby revoking all former wills by me made.

Twenty-second—I know that there will be a great deal of work in connection with a proper execution of this will; I therefore give and bequeath to Samuel Nelson and Arvid Ericson Ten Hundred.00 dollars ($1000.00), to each of them as a compensation for their work and good judgment in connection herewith.

Twenty-third—If anyone of my heirs resorts to the courts to break the provision of this will, the bequests to such heirs will be revoked by said act, and the said heir's portion will go into my estate to be divided among the other legatees.

Twenty-fourth—If anyone of my heirs, except sister Britta, sister Karin, brother Johannes, brother Carl and brother Gustaf, who have been bequeathed one part of the twenty-seven (27) parts, as described in this my last will, should die before I am deceased, his or her part of the twenty-seven (27) parts will go to the general fund and be inherited, pro rata, by all the remaining heirs.

In Witness thereof I have herein set my hand and seal this 9th day of June in the year of 1937.

(Sgd) Olof Zetterlund

The above instrument was, at the day thereof, signed, sealed, published and declared, by the said Olof Zetterlund, as, and for his last will and testament in presence of us, who, at his request, and in his presence, and in the presence of each others, have subscribed our names as witnesses thereof.

(Sgd) E. L. Lockhart, (Sgd) P. A. Williams

2

Summary of the balance of my estate described herein and divided into twenty-seven (27) parts.

Sister Britta—one part.
Brother Johannes—one part.
Brother Carl—one part.
Brother Gustaf—one part.
Sister Karin—one part.
Nephew Albert—one part.
Nephew David—one part.
Niece Hulda—one part.
Niece Signe—one part.
Nephew Gustaf—one part.
Nephew Carl—one part.
Niece Ruth—one part.
Niece Naimie—one part.
[fol. 96] Niece Hanna—one part.
Niece Sara—one part.
Nephew Gustaf—one part.
Nephew Enfrid—one part.
Nephew Samuel—one part.
Nephew Paul—one part.

Niece Hanna—one part.
Niece Ester—one part.
Niece Lydia—one part.
Niece Constance—one part.
Niece Hulda—one part.
Niece Maria—one part.
Nephew Paul—one part.
Nephew John—one part.
Total—27 parts.

3

[fol. 97] 5

On October 2, 1945, Dora Miller and Harold M. Davidson filed in this cause their petition for revocation of probate, the same being in words and figures as follows:

(Caption and Style Omitted)

Petition for Revocation of Probate

To the Honorable W. F. Blanton, Judge of the County Judge's Court, Dade County, Florida:

The petition of Dora Miller and Harold M. Davidson respectfully shows unto this Court as follows:

1. That the petitioner Dora Miller is legatee under the Last Will and Testament of the said Olof Zetterlund, deceased, and that the petitioners Dora Miller and Harold M. Davidson are Co-Executors of the Codicil to the Last Will and Testament of said Olof Zetterlund, deceased.

2. That an instrument alleged to be the Last Will and Testament of the said Olof Zetterlund, deceased, was admitted to probate by Your Honor on the 6th day of September, 1945, without notice to petitioners, and that your petitioners, being dissatisfied with the probate of said Will, now file this petition for revocation of probate thereof.

3. That the said Olof Zetterlund was a resident of the City of San Gabriel, County of Los Angeles, State of California, at the time of his death on August 21, 1945 and for some time prior thereto and was not a resident of the State of Florida at the time of his death nor for some years prior

[fol. 98] thereto. Therefore, this Honorable Court does not have jurisdiction of said estate.

4. That the instrument probated as the Last Will and Testament of said Olof Zetterlund, deceased, is not the complete Last Will and Testament of the said Olof Zetterlund, deceased. That the said Zetterlund did on the 3rd day of August, 1945, make, declare and publish a Codicil to his said original will dated June 9, 1937, in and by which Codicil he declared himself to be a resident of the County of Los Angeles, State of California.

5. That the said Codicil with a copy of the Will attached was filed for probate in the Superior Court of the State of California in and for the County of Los Angeles on August 31, A. D. 1945, and that the same was admitted to probate by order of said Court on the 28th day of September, A. D. 1945. An exemplified copy of said proceedings in the Superior Court of the State of California in and for the County of Los Angeles, including: A petition for Probate of the Codicil of said Will, a copy of the original Will of the said Olof Zetterlund bearing date June 9, 1937, a copy of the Codicil to the Last Will and Testament of the said Olof Zetterlund dated the 3rd day of August, 1945, the order admitting the Codicil to Probate and for Letters Testamentary signed on September 28, 1945, and Letters Testamentary appointing Dora Miller and Harold M. Davidson as Co-Executors, dated September 28, 1945, is hereto attached, marked Exhibit "A" and made a part hereof.

6. That Dora Miller and Harold M. Davidson, the duly appointed Co-Executors of the Estate of Olof Zetterlund, deceased, under said Codicil, are duly qualified and au-[fol. 99] thorized to file this petition and to take such other steps as may be necessary herein.

Wherefore, Petitioners pray:

1. That the said Order Admitting the instrument alleged to be the Last Will and Testament of Olof Zetterlund, deceased, entered September 6, 1945, by this Court be revoked.

2. That this Court declare the residence of the said Olof Zetterlund at the time of his death to be in Los Angeles County, State of California.

3. That this Court admit the exemplified Codicil to the

Last Will and Testament of Olof Zetterlund with the Will annexed, for probate and ancillary proceedings in this Court.

4. That petitioners be appointed Ancillary Executors of the Last Will and Testament and the Codicil thereof of said Olof Zetterlund, deceased, and, in the alternative, if the Court finds petitioners disqualified, that he appoint some suitable person as Ancillary Executor of the exemplified copy of the Codicil with the Will annexed of the said Olof Zetterlund, deceased.

(Sgd.) J. C. Sullivan, Atty. for Petitioners.

State of Florida,
County of Dade, ss:

Personally this day appeared before me, the undersigned authority, Harold M. Davidson, who, being first duly sworn, deposes and says that he is one of the petitioners in the above and foregoing petition; that he has read said petition, knows the contents thereof, and that the same are true to the [fol. 100] best of his knowledge and belief.

(Sgd.) Harold M. Davidson.

Sworn to and Subscribed before me this 2nd day of October, A. D. 1945. (Sgd.) Helen Eckhoff, Notary Public, State of Florida at Large. My commission expires 5-25-47. (N. P. Seal.)

Exhibit "A", referred to in the foregoing petition, is omitted from this transcript.

[fol. 101] 6

Citation was duly issued, published and served on the petition of Dora Miller and Harold M. Davidson, filed as aforesaid on October 2, 1945, and thereafter, on October 11, 1945, Samuel Nelson, Constance Nelson Ericson and Arvid Ericson filed their joint and several defenses to said petition of Dora Miller and Harold M. Davidson, the same being in words and figures following:

(Caption and Style Omitted)

Defenses to Petition of Dora Miller and Harold M. Davidson for Revocation of Probate, Presented and Filed October 2, 1945

Now come Samuel Nelson, Constance Nelson Ericson and Arvid Ericson, jointly and severally, the same being "interested persons and persons interested in the estate" of Olof Zetterlund, deceased, and for defenses to the petition of Dora Miller and Harold M. Davidson for revocation of probate, presented and filed October 2, 1945, severally say:

(1) They deny that Dora Miller and Harold M. Davidson are co-executors of the Estate of Olof Zetterlund, deceased.

(2) They admit that the Last Will and Testament of Olof Zetterlund, bearing date June 9, 1937, was admitted to probate by order of this Court rendered on September 6, 1945. They deny the other averments of Paragraph 2 of said petition.

(3) They deny that Olof Zetterlund was a resident of the City of San Gabriel, County of Los Angeles, State of California, [fol. 102] at the time of his death on August 21, 1945. They say that Olof Zetterlund was a resident and citizen of the State of Florida at the time of his death on August 21, 1945.

(4) The Last Will and Testament of Olof Zetterlund, bearing date June 9, 1937, admitted to probate on September 6, 1945, constitutes the complete Last Will and Testament of said decedent. They deny that the said Olof Zetterlund made a Codicil on August 3, 1945.

(5) They say that the purported Codicil of August 3,

1945, and the proceedings had thereon, as described in Paragraph 5 of said petition, is a nullity and of no effect for that:

(a) The said Olof Zetterlund was not a resident of, nor domiciled in the State of California, at the time of his death.

(b) The said Codicil bearing date August 3, 1945, is spurious and not genuine.

(c) The said Codicil bearing date August 3, 1945, was made at the time when the said Olof Zetterlund did not possess testamentary capacity, and was not of sound mind.

(d) The said Codicil bearing date August 3, 1945, was procured by the said Dora Miller and Harold M. Davidson through fraud, or duress, or mistake, or menace, or undue influence, and hence is null and void.

[fol. 103] (e) The proceedings in the Superior Court of the State of California, in and for the County of Los Angeles, described in Paragraph 5 of said petition, were had and conducted in the same court in which the said Dora Miller and Harold M. Davidson instituted and prosecuted the following proceedings, to-wit: On May 17, 1945, the said Dora Miller, by and through the said Harold M. Davidson as her attorney, filed in said Court a petition for the appointment of a guardian of the person and estate of Olof Zetterlund, in which petition the said Dora Miller, under oath, alleged that the said Olof Zetterlund, then living, was incompetent and incapable of "caring for and managing his properties and his estate". Said petition was submitted to the Judge of said Court on May 23, 1945, together with medical proof that said Olof Zetterlund at said time was suffering from chronic senility. That the said Olof Zetterlund at said time was 85 years of age. Upon said petition and proof, the Judge of said Court, on May 23, 1945, entered an order adjudicating Olof Zetterlund incompetent and incapable of taking care of himself and managing his property, which order remained in full force and effect continuously thereafter until the time of the death of Olof Zetterlund. At the time of making of said Codicil on August 3, 1945, the said Olof Zetterlund was under the disabilities of incompetency adjudicated by said Court upon the petition of the said Dora Miller and Harold M. Davidson. That by virtue [fol. 104] of said proceedings had and conducted in the State of California by Dora Miller and Harold M. Davidson, they are now precluded and estopped from asserting that Olof Zetterlund possessed testamentary capacity on August 3, 1945, the date of the making of the purported Codicil. An exemplified copy of said incompetency proceedings is hereto attached and made a part hereof.

(f) The proceedings described in Paragraph 5 of said petition were had and taken in a Court which was wholly without jurisdiction over the Estate of Olof Zetterlund, Deceased.

(6) They deny that Dora Miller and Harold M. Davidson are the duly appointed co-executors of the Estate of Olof Zetterlund, deceased, under said Codicil.

(7) It is true that at the time of the death of Olof Zetterlund on August 21, 1945, and for some time prior thereto, the said Dora Miller was his household servant or employee. That during said employment period and for several years preceding his death, the said Olof Zetterlund was infirm, senile, ill and incompetent. That during this period and while the said Olof Zetterlund was under the aforesaid disabilities, the said Dora Miller, with the actual knowledge, consent and acquiescence of the said Harold M. Davidson, her attorney, took advantage of the said Olof Zetterlund and wrongfully and unlawfully appropriated unto herself large sums of money and property of the said Olof Zetterlund and invested funds belonging to said Olof Zet- [fol. 105] terlund in real and personal property, and took title thereto in the individual name of Dora Miller or other nominees. The exact amount of such wrongful and illegal appropriation of the funds and property of Olof Zetterlund by Dora Miller is to the undersigned unknown. That the making of the aforesaid purported Codicil on August 3, 1945, by Olof Zetterlund, was at the instance and direction of Dora Miller and Harold M. Davidson, pursuant to a design and scheme on their part to gain control over all the assets of Olof Zetterlund, deceased, and was made at

the time when Olof Zetterlund was on his deathbed and wholly without testamentary capacity.

(8) At the time of the making of the purported Codicil on August 3, 1945, the said Olof Zetterlund was not of sound mind, and was wholly without testamentary capacity, and that by reason thereof the said purported Codicil is null and void.

McCune, Hiaasen & Fleming, Broward Bank & Trust Building, Fort Lauderdale, Florida. (Sgd.) by C. A. Hiaasen, Attorneys for Samuel Nelson, Constance Nelson Ericson and Arvid Ericson.

STATE OF FLORIDA,
County of Broward:

Before me, the undersigned authority, personally appeared C. A. Hiaasen, who being first sworn, says that he is of counsel for the above Samuel Nelson, Constance Nelson Ericson and Arvid Ericson; that on the 9th day of October, 1945, he did mail a true and complete copy of the foregoing [fol. 106] defenses to Mr. John C. Sullivan, Attorney at Law, Ingraham Building, Miami 32, Florida, who is the attorney of record for Dora Miller and Harold M. Davidson.

(Sgd.) C. A. Hiaasen.

Subscribed and sworn to before me this 9th day of October, 1945. (Sgd.) Helen Woodruff, Notary Public, State of Florida at Large. My commission expires 2-13-46. (N.P. Seal.)

There was attached to the foregoing defenses and made a part thereof an exemplified copy of the California incompetency proceedings of Olof Zetterlund, now deceased, described in said defenses, the same being a record of the proceedings had in the Superior Court of the State of California in and for the County of Los Angeles, entitled: "In the Matter of the Guardianship of the Person and Estate of Olof Zetterlund, an Incompetent Person, No. 243553", which transcript of proceedings is not included herein.

[fol. 107]

7

On November 19, 1945, J. M. Lee, Comptroller of the State of Florida, as Commissioner of Revenue of the State of Florida, filed his "Amended Motion to Dismiss Petition of Dora Miller and Harold M. Davidson for Revocation of Probate, Presented and filed October 2, 1945'', being in words and figures following:

(Caption and Style Omitted)

Amended Motion to Dismiss Petition of Dora Miller and Harold M. Davidson for Revocation of Probate, Presented and Filed October 2, 1945.

Comes now J. M. Lee, Comptroller of the State of Florida, as Commissioner of Revenue of the State of Florida, by his attorney undersigned, and respectfully showeth unto the court:

1

That under and by virtue of the statutes of Florida he is charged with the administration and the collection of taxes against estates of decedents and as such is vitally interested in the determination of the domicile of the decedent, Olof Zetterlund.

2

Wherefore, the court is respectfully requested to consider the following:

Amended Motion to Dismiss

On behalf of the State of Florida, as represented by the Comptroller, J. M. Lee, in his capacity as Commissioner of Revenue, and as grounds for the Motion to Dismiss, [fol. 108] going to each and every portion of the petition of Dora Miller and Harold M. Davidson for Revocation of Probate, which seeks to place the domicile of Olof Zetterlund in California, your movant sets up the following:

(a) That the aforesaid petition shows upon its face that Olof Zetterlund was at all times prior to and up to the time of his death domiciled in the State of Florida.

(b) That said petition shows upon its face that it is a studied attempt to deprive the State of Florida of jurisdiction of this estate by a purported change in domicile which is not borne out by any facts alleged in said petition.

J. M. Lee, Comptroller of the State of Florida, as Commissioner of Revenue of the State of Florida.
(Sgd.) by Lewis H. Tribble, his Attorney.

State of Florida,
County of Leon:

Before me, the undersigned authority, personally appeared Lewis H. Tribble, who being first duly sworn says that he is counsel for the above J. M. Lee, Comptroller of the State of Florida, and that on the 17th day of November, 1945, he did mail a true and complete copy of the foregoing Amended Motion to Dismiss to:

Mr. Ernest A. Eklund, Attorney at Law,
33 South Clark Street,
Chicago, Illinois.

and

Mr. Glynn O. Rasco, Attorney at Law,
835 Lincoln Road,
Miami Beach, Florida,

[fol. 109] who are attorneys of record for Karin Zetterlund; and

McCune, Hiaasen and Fleming, Attorneys,
Broward Bank and Trust Building,
Ft. Lauderdale, Florida,

who are attorneys for Samuel Nelson, Constance Nelson Ericson and Arvid Ericson, and

Mr. John C. Sullivan, Attorney,
Ingraham Building,
Miami, Florida,

who is attorney for Dora Miller and Harold M. Davidson.

(Sgd.) Lewis H. Tribble.

Sworn to and subscribed before me this 17th day of November, 1945. (Sgd.) Lois Lang, Notary Public. (N.P. Seal.)

[fol. 110] 8

On November 19, 1945, J. M. Lee, Comptroller of the State of Florida, as Commissioner of Revenue of the State of Florida, filed his "Amended Answer to Petition of Dora Miller and Harold M. Davidson for Revocation of Probate, Presented and Filed October 2, 1945", being in words and figures following:

(Caption and Style Omitted)

Amended Answer to Petition of Dora Miller and Harold M. Davidson for Revocation of Probate, Presented and Filed October 2, 1945.

Comes now J. M. Lee, Comptroller of the State of Florida, as Commissioner of Revenue of the State of Florida, by his attorney undersigned, and respectfully showeth unto the court:

1

That under and by virtue of the statutes of Florida he is charged with the administration and the collection of taxes against estates of decedents and as such is vitally interested in the determination of the domicile of the decedent, Olof Zetterlund.

2

Wherefore the court is respectfully requested to permit the filing of the following:

Amended Answer to Petition

On behalf of the State of Florida, as represented by the Comptroller, J. M. Lee, in his capacity as Commissioner of [fol. 111] Revenue, and answering the aforesaid petition, avers the following:

(a) He admits that the last will and testament of Olof Zetterlund bearing date of June 9, 1937, was admitted to probate by order of this court rendered on September 6, 1945.

(b) He denies that Olof Zetterlund was a resident of the city of San Gabriel, County of Los Angeles, State of California, at the time of his death on August 21, 1945, and on the contrary says that Olof Zetterlund was a resident and citizen of the State of Florida on August 21, 1945.

(c) He denies any and every averment in said petition with respect to the domicile of Olof Zetterlund being in the State of California at the time of his death.

(d) He alleges affirmatively that at the time the said Olof Zetterlund was transported to the State of California by Dora Miller, his housekeeper and nurse, he was over 80 years of age and in his dotage, without mental capacity sufficient to have the intent to change his domicile.

(e) That for many years prior to and at the time of his death, he reported to the tax assessing authorities of the State of Florida the amount of his intangible tax for the purpose of paying same as a resident of Florida, and filed his annual income tax return with the Federal Government in the Jacksonville, Florida office.

(f) That prior to the date of the purported codicil, the [fol. 112] validity of which is hereby denied, proceedings were brought by Dora Miller, the decedent's housekeeper and nurse, represented by Harold M. Davidson, for the appointment of a guardian in California upon the grounds that he was incapable of handling his own affairs and that in these proceedings evidence was submitted which was sufficient to satisfy the court that the said Olof Zetterlund was so old, aged, infirm and childish as to be incapable of conserving his estate. Whereupon, the aforesaid Dora Miller, represented by Harold M. Davidson, was appointed guardian. Thereafter, the aforesaid Dora Miller and Harold M. Davidson, taking advantage of the condition set up and established by said guardianship proceeding, and with the intent to deprive the State of Florida of the right to have the administration of this estate within its borders, did cause to be placed in said purported codicil a statement that the domicile of the decedent was in California.

J. M. Lee, Comptroller of the State of Florida, as
Commissioner of Revenue of the State of Florida.
(Sgd.) by Lewis H. Tribble, his Attorney.

State of Florida,
County of Leon:

Before me, the undersigned authority, personally appeared Lewis H. Tribble, who being first duly sworn says that he is counsel for the above J. M. Lee, Comptroller of the State of Florida, and that on the 17th day of November, 1945, he did mail a true and complete copy of the foregoing Amended Answer to Petition to:

[fol. 113] Mr. Ernest A. Erklund, Atorney at Law,
33 South Clark Street,
Chicago, Illinois,
and
Mr. Glynn O. Rasco, Attorney at Law,
835 Lincoln Road,
Miami Beach, Florida.
who are attorneys of record for Karin Zetterlund; and
McCune, Hiaasen and Fleming, Attorneys,
Broward Bank and Trust Building,
Ft. Lauderdale, Florida,
who are attorneys for Samuel Nelson, Constance Nelson Ericson and Arvid Ericson, and
Mr. John C. Sullivan,
Ingraham Building,
Miami, Florida,
who is attorney for Dora Miller and Harold M. Davidson.
(Sgd.) Lewis H. Tribble.

Sworn to and subscribed before me this 17th day of November, 1945. (Sgd.) Lois Lang, Notary Public. (N.P. Seal.)

[fol. 114] 9

On November 21, 1945, the interested persons hereinafter named, filed their defenses to the petition of Dora Miller and Harold M. Davidson for revocation of probate presented and filed October 2, 1945, being in words and figures following:

(Caption and Style Omitted)

Defenses to the Petition of Dora Miller and Harold M. Davidson for Revocation of Probate Presented and Filed October 2, 1945

In response to the citation dated October 11, 1945, returnable on or before November 22, 1945, issued consequent upon the "Petition for Revocation of Probate" filed by

Dora Miller and Harold M. Davidson on October 2, 1945, the undersigned, all of whom are the devisees, legatees and beneficiaries under the Last Will and Testament of Olof Zetterlund bearing date June 9, 1937, and therefore interested in said estate, jointly and severally file these defenses addressed to the "Petition for Revocation of Probate", filed by Dora Miller and Harold M. Davidson on October 2, 1945, and jointly and severally say:

(1) The undersigned do hereby jointly and severally adopt as their own the written "Defenses to Petition of Dora Miller and Harold M. Davidson for Revocation of Probate, Presented and filed October 2, 1945", filed jointly and severally on October 11, 1945, by Samuel Nelson, Constance Nelson Ericson and Arvid Ericson.

[fol. 115] (2) The undersigned do hereby jointly and severally appoint, designate and name as their attorneys and agents the law firm of McCune, Hiaasen & Fleming, whose specific address is Broward Bank & Trust Building, Fort Lauderdale, Florida.

(3) The names and specific addresses of the persons on whose behalf this pleading is made and filed, all of whom constitute devisees and legatees under the Last Will and Testament of Olof Zetterlund, deceased, are as follows:

(a) The following, all of whom are children of Johannes Zetterlund, now deceased, a brother of Olof Zetterlund, and who are specifically named in the 16th paragraph of said Last Will and Testament:

David E. Zetterlund,
Edgrensgatan 9,
Arvika, Sweden.
Mrs. Hulda Zetterlund Anderson,
Algarden,
Arvika, Sweden.
Mrs. Signe Zetterlund Anderson,
Kyrkogatan 26
Arvika, Sweden.
Gustaf Zetterlund,
Horngatan 9,
Arvika, Sweden.
Carl Zetterlund,
Vansbro, Sweden.

(b) The following, all of whom are children of Britta Zetterlund Rensta, now deceased, a sister of Olof Zetterlund, deceased, and who are specifically named in the 17th paragraph of said Last Will and Testament:

[fol. 116] Ruth Rensta, also known as Rut Rensta,
Dottevik, Arvika, Sweden.
Naemi Rensta, also known as Rebecka Naemi Rensta,
Dottevik, Arvika, Sweden.
Hanna Rensta,
Dottevik, Arvika, Sweden.
Mrs. Sara Elizabet Rensta Wallin,
Tyska, Fallet, Strasso, Sweden.
Gustaf Rensta,
207-A Lakeshore Road,
Woodlands, Quebec, Canada, and % Canadian Pacific Airlines, 1011 Confederation Building, Montreal, Quebec, Canada.
Ernfrid E. Rensta, also known as Enfrid E. Rensta,
3409 J Street,
Sacramento 16, California.

(c) The following, all of whom are children of Kajsa Zetterlund Nelson, now deceased, a sister of Olof Zetterlund, deceased, and who are specifically named in the 18th paragraph of said Last Will and Testament:

Samuel Nelson,
2 Burnet Street,
Maplewood, New Jersey.
Mrs. Hannah Elizabeth Nelson Wiren, also known as Mrs. Hanna Elizabeth Nelson Wiren,
East Orange, New Jersey.
Mrs. Ester Maria Nelson Olofson,
Madison, New Jersey.
Mrs. Constance Nelson Ericson,
13400 Shaker Boulevard,
Cleveland, Ohio.
Lydia Caroline Nelson Bergen,
Brooklyn, New York.

(d) The following, all of whom are children of Eric Zetterlund, now deceased, a brother of Olof Zetterlund, deceased, and who are specifically named in the 19th paragraph of said Last Will and Testament:

[fol. 117] Mrs. Hulda Zetterlund Olsson,
Takene, Brunsberg,
Sweden.
Mrs. Maria Zetterlund Backlund,
Skog, Brunsberg,
Sweden.
Paul Eriksson Zetterlund,
Lerhol, Edane, Sweden.

(e) These defenses are also being filed on behalf of

Mrs. Maria Zetterlund Anderson,
N 60,
Charlottenberg, Sweden,

a daughter of Johannes Zetterlund, now deceased, a brother of Olof Zetterlund, deceased.

(4) That all the persons on whose behalf this pleading is filed urge and request the Court to appoint Samuel Nelson as sole executor of the Last Will and Testament of Olof Zetterlund, deceased.

McCune, Hiaasen & Fleming. By (S.) C. A. Hiaasen,
Attorneys for the above persons specifically named.

State of Florida,
County of Broward.

Personally before me, the undersigned authority, appeared Martha Brooks, who, upon oath, says that she is a stenographer employed in the law offices of McCune, Hiaasen & Fleming, attorneys for the persons specifically named in the foregoing defenses, and in pursuance of her duties as such she, on the 21st day of November, 1945, did mail to [fol. 118] Mr. John C. Sullivan, attorney of record for Dora Miller and Harold M. Davidson in this cause, a true and complete copy of the above and foregoing defenses enclosed in an envelope bearing the requisite amount of United States uncancelled postage stamps, addressed as follows:

Mr. John C. Sullivan,
Attorney at Law,
Ingraham Building,
Miami, Florida,

by depositing each of said envelopes, properly sealed, stamped and addressed as aforesaid, in a receptacle provided by the United States Postal Department in the City of Fort Lauderdale, Florida, for the receipt of outgoing mail; and that the address on said envelope is the usual post office address of the said attorney. All on the 21st day of November, 1945.

(S.) Martha Brooks.

Subscribed and sworn to before me this 21st day of November, 1945. (S.) Helen Woodruff, Notary Public, State of Florida at large. My commission expires February 13, 1946. (N. P. Seal.)

[fol. 119] 10

On January 24, 1946, the State of California, by and through its Controller, Harry B. Riley, filed its petition for revocation of probate and for ancillary probate of will of Olof Zetterlund, being in words and figures following:

(Caption and Style Omitted)

Petition for Revocation of Probate and for Ancillary Probate of Will of Olof Zetterlund

The petition of the state of California, by and through its Controller, Harry B. Riley, respectfully shows:

I

That Olof Zetterlund died on August 21, 1945, and at the time of his death he was a resident and citizen of the state of California, residing in San Gabriel, county of Los Angeles, state of California.

II

Formerly the said deceased was a resident of the state of Florida, and, while residing in Florida, he executed his last will and testament on June 9, 1937, and thereafter he removed to the state of California. On the third day of August, 1946, he made a codicil to his original will, in which he declared himself to be a resident of the state of California; said original codicil and a copy of said will were filed for probate in Los Angeles County, California, on August 31, 1945, and said codicil was admitted to probate in said Los Angeles County, California, on September 28, [fol. 120] 1945. A supplemental order was entered in said court on November 15, 1945, admitting said will to probate.

III

In the meantime, James Q. Burdet, who is not related to the deceased but who had obtained possession of said original will, filed it in the Probate Court of Dade County, Florida, and, on September 6, 1945, he filed in said Probate Court a petition to probate said will, alleging that the deceased was a citizen of Dade County, Florida. The Honorable W. F. Blanton, Judge of said Probate Court, admitted the will to probate on September 6, 1945, and held the appointment of a personal representative in abeyance until further order of the court. This order of probate does not state whether the deceased is a citizen or resident of Florida or not, and petitioner alleges that the deceased was not a citizen or resident of Florida at the time of his death, and that said original will should have been probated in California. The codicil to said will above mentioned has not been offered for original probate in Dade County, Florida.

IV

Said probate in Dade County, Florida, was entered without notice to petitioner or to anyone else, and petitioner alleges that said probate should be revoked as an original probate and that said will should be probated in Dade County, Florida, in ancillary proceedings. An exemplified copy of the probate proceedings in the Superior Court of [fol. 121] the state of California, in and for the county of Los Angeles, showing the petition for the probate of said will and codicil, a copy of the original will, a copy of the codicil to said will, the orders admitting the codicil and will to probate, and a copy of the letters testamentary appointing Dora Miller and Harold M. Davidson as co-executors of said will, is now on file in the office of the County Judge of Dade County, Florida, and the same is hereby made a part of this petition by reference.

Wherefore, petitioner prays that the order of the County Judge of Dade County, Florida, admitting the said original will of the deceased to original probate in Florida, dated September 6, 1945, be set aside and revoked; that, thereupon, said will and the codicil mentioned herein be admitted to probate in Dade County, Florida, in ancillary proceedings, and ancillary personal representatives be appointed by this honorable court; that this honorable court declare the residence and citizenship of the said Olof Zetterlund at the time of his death to have been in Los Angeles County, State of California, and that such other and further relief be granted to your petitioner as to this court may seem proper.

Redfearn & Ferrell. By (Sgd.) D. H. Redfearn, Attorneys for Petitioner.

Morton L. Barker, being sworn by me, the undersigned officer, says on oath that Harry B. Riley is the Controller of the state of California, and, as such Controller, is [fol. 122] vested under the laws of said state with the duty of enforcing the inheritance tax laws; that affiant is authorized to make this affidavit; and that the statements contained in the foregoing petition are true.

(Sgd.) Morton L. Barker.

Sworn to and subscribed before me, this the 14th day of January, 1946. (Sgd.) Elnora Stanton, Notary Public. (N. P. Seal.)

[fol. 123] 11

On February 2, 1946, the following defenses were filed to said petition of the State of California and its Controller by the persons therein named, being in words and figures following:

(Caption and Style Omitted)

Defenses of Samuel Nelson, Constance Nelson Ericson and Arvid Ericson, addressed to "Petition for Revocation of Probate and for Ancillary Probate of Will of Olof Zetterlund" filed by the State of California by and through its Controller, Harry B. Riley

Now come Samuel Nelson, Constance Nelson Ericson and Arvid Ericson, jointly and severally, and for defenses to the

Petition of the State of California by and through its Controller for revocation of probate, thereupon say:

(1) They admit that Olof Zetterlund died on August 21, 1945. They deny that Olof Zetterlund at the time of his death was a resident and citizen of the State of California. They allege that Olof Zetterlund at the time of his death was a citizen of and domiciled in the State of Florida.

(2) They admit that Olof Zetterlund executed his Last Will and Testament on June 9, 1937, which Last Will and Testament was duly admitted to probate in this Court by order made and entered on September 6, 1945, in pursuance to law. They deny that Olof Zetterlund made a codicil to his original will on August 3, 1945. They say that the purported codicil, bearing date August 3, 1945, is null and void [fol. 124] for that:

(a) The signature of Olof Zetterlund appearing on the purported codicil bearing date August 3, 1945, is spurious and not genuine.

(b) That at the time of the making of said codicil, on August 3, 1945, the said Olof Zetterlund was not of sound mind and did not possess testamentary capacity.

(c) The said purported codicil, bearing date August 3, 1945, was procured by Dora Miller and Harold M. Davidson through fraud, or duress, or mistake, or menace, or undue influence.

(3) The said Dora Miller and Harold M. Davidson are not related to Olof Zetterlund, deceased, within the third degree or any other degree.

(4) The persons, on whose behalf this pleading is filed, now interpose their Motion to Strike the Petition of the State of California by and through its Controller, Harry B. Riley, for revocation of probate, for that:

(a) The State of California by and through its Controller is neither a legatee, devisee, heir-at-law or beneficiary and hence is not entitled as a matter of law to institute such proceedings.

(b) The conditions and steps prescribed by the 1933 Probate Act for revocation of probate have not been had and taken.

(c) There is no provision in the 1933 Probate Act authorizing the filing of such petition.

[fol. 125] (5) The persons, on whose behalf these pleadings are filed, move to quash the "Notice of Taking Depositions de bene esse" given on behalf of the State of California and Harry B. Riley, Controller, Dora Miller and Harold M. Davidson, jointly, for that:

(a) No depositions can be taken on the Petition of the State of California and its Controller, Harry B. Riley, until said Petition has been put at issue.

(b) The said Petition for revocation of probate requires citation to all interested persons, which citation has not been given and, hence, said notice of taking depositions has not been given to all interested persons.

(Sgd) McCune, Hiaasen & Fleming, (Sgd) C. A. Hiaasen, Attorneys for Samuel Nelson, Constance Nelson Ericson and Arvid Ericson.

State of Florida,
County of Broward:

Before me the undersigned authority personally appeared C. A. Hiaasen, who being first duly sworn, deposes and says that he is of counsel for Samuel Nelson, Constance Nelson Ericson and Arvid Ericson, named in the foregoing defenses; that on January 31, 1946, he did mail a copy of the foregoing defenses to

Messrs. Redfearn & Ferrell
Attorneys for the State of California and its Controller, Harry B. Riley
Shoreland Building
Miami, Florida;

that on January 31, 1946, he did mail a copy of the foregoing defenses to

[fol. 126] Mr. John C. Sullivan
Attorney for Dora Miller and Harold M. Davidson,
Ingraham Building
Miami, Florida.

(Sgd) C. A. Hiaasen

Subscribed and sworn to before me this 31st day of January, 1946.

(Sgd) Helen Woodruff, Notary Public, State of Florida at large. My commission expires February 13, 1946.

(N. P. Seal)

[fol. 127] 12

On February 28, 1946, the State of Florida by and through its Comptroller, filed its answer to petition for revocation of probate and for ancillary probate of will of Olof Zetterlund, being in words and figures following:

(Caption and Style Omitted)

Answer to Petition for Revocation of Probate and for Ancillary Probate of Will of Olof Zetterlund

The State of Florida, by and through its Comptroller, J. M. Lee, as Commissioner of Revenue, answers the petition for revocation of probate and for ancillary probate of will of Olof Zetterlund heretofore filed by the State of California, by and through its Comptroller, Harry B. Riley, and respectfully says:

1

That the State of Florida admits that Olof Zetterlund died on August 21, 1945, but denies that at the time of his death he was a resident or citizen of the State of California.

2

That said deceased was, at the time of his death and for a long time prior thereto a resident of the State of Florida.

WHEREFORE, it is respectfully prayed that said petition of the State of California be denied.

(Sgd.) Lewis H. Tribble, Attorney for J. M. Lee, Commissioner of Revenue.

[fol. 128] 13

On April 13, 1946, Karin Zetterlund filed her answer to petition for revocation of probate and for ancillary probate of will of Olof Zetterlund, deceased, being in words and figures following:

(Caption and Style Omitted)

Answer to Petition for Revocation of Probate and for Ancillary Probate of Will of Olof Zetterlund, Deceased

Comes now, Karin Zetterlund, by and through her undersigned attorneys, and Enfrid Rensta (also known as Fred Rensta) by and through his undersigned attorney, and file this their answer to the petition of the State of California and say:

1

In answer to paragraph 1 of said petition, they admit that Olof Zetterlund died on August 21st, 1945, but deny that he was a citizen of the State of California.

2

In answer to paragraph 2 of said petition, they admit that the deceased did reside in the State of Florida and did execute his Last Will and Testament on June 9, 1937 in Miami, Dade County, Florida, but deny that he removed to the State of California immediately thereafter. As to the execution of the Codicil to the original will in which Codicil he declared himself a resident of the State of California, the respondents have no knowledge of proceedings had in California.

[fol. 129] 3

In answer to paragraph 3 of said petition, they admit that James Q. Burdet, who is not related to the deceased, had possession of the original Will and did on September 6, 1945, file same, together with a petition with the Honorable W. F. Blanton, Judge of the Probate Court, and that the said Judge did admit the Will to probate and he did, then and there, appoint the said James Q. Burdet as Curator but did not appoint a personal representative other than said Curator, and held in abeyance the question as to the deceased being a citizen or resident of the State of Florida until further order of that Court.

4

In answer to paragraph 4 of said petition, they admit that probate in Dade County, Florida, was entered without notice to the petitioners or to anyone else. In further answer to paragraph 4, respondents are without knowledge, and demand strict proof thereof.

Rasco & Esslinger, by (Sgd) Glynn O. Rasco, Counsel for Enfrid Rensta and Associate Counsel for Karin Zetterlund, 835 Lincoln Road, Miami Beach, Florida. (Sgd) Ernest A. Eklund, Counsel for Karin Zetterlund, 33 South Clark Street, Chicago, Illinois.

[fol. 130] 14

Thereafter the cause came on for trial before the Honorable W. F. Blanton. Said trial lasted four days and took place on June 10, June 11, June 14 and October 4, 1946. At said trial numerous documentary exhibits were received in evidence, which included, inter alia, the following:

California's Exhibits

No. 1. Certified copy of the administration proceedings of the Estate of Olof Zetterlund then pending in the Superior Court of the State of California, in and for the County of Los Angeles, No. 246,797, covering the proceedings begun August 31, 1945, up to September 28, 1945.

No. 2. Certified copy of the administration proceedings of the Estate of Olof Zetterlund then pending in the Superior Court of the State of California, in and for Los Angeles County, No. 246,797, covering the proceedings from September 28, 1945, up to November 15, 1945.

No. 8 and 9. Exemplified copy of the record of the guardianship proceedings had in the Superior Court of the State of California, in and for Los Angeles County, entitled: "In the matter of the guardianship of the person and estate of Olof Zetterlund, an incompetent person, No. 243,553", which copy was attached to the several defenses shown in this transcript of proceedings as Item No. 6, pages 17 to 22, inclusive hereof.

Samuel Nelson's Exhibits

No. 9. Photostatic exemplified copy of all the proceedings had in the Superior Court of the State of California, County of Los Angeles, entitled: "In the matter of the guardianship of the person and estate of Olof Zetterlund, an incompetent person", No. 243,553, from the date of the institution of said proceedings until May 29, 1946.

[fol. 131] No. 10. Photostatic exemplified copy of the administration proceedings of the Estate of Olof Zetterlund, deceased, had in the Superior Court of the State of California, in and for the County of Los Angeles, No. 246,797, from the date of the institution of said proceedings until May 24, 1946.

That the transcript of testimony adduced at said trial, as lodged in this Court, and said documentary exhibits, are excluded herefrom.

[fol. 132] 15

Thereupon, after due consideration of said issues thus presented, the Honorable W. F. Blanton, Judge of said Court, on December 31, 1946, made and entered his judgment, order and decree, recorded in Record of Probate Orders, Book 140, page 228, being in words and figures as follows:

(Caption and Style Omitted)

Order Denying Petition of the State of California, et al., and Finding that Decedent Was a Florida Resident at Time of His Death

This cause coming on to be heard upon the Petition of the State of California by and through its Comptroller, Harry B. Riley, for an Order revoking and setting aside that certain Order dated September 6, 1945, and recorded in Book of Wills 122 at page 32 in the Office of the County Judge in and for Dade County, Florida, which said Order admitted to probate the Will of Olof Zetterlund, deceased, dated June 9, 1937.

And also upon the Petition of Dora Miller and Harold M. Davidson also praying that said Will be revoked, and each of said Petitions further praying that this Court declare the said Olof Zetterlund, deceased, to have been a resident of the State of California at the time of his death, and that this Court admit an exemplified copy of the Last Will and Testament and a Codicil thereto of said Olof Zetterlund for Probate and Ancillary Proceedings in this Court, and that the Petitioners Dora Miller and Harold M. Davidson be appointed Ancillary Executors of said Last Will and [fol. 133] Testament and Codicil, or if said persons were disqualified to act as such, that the Court appoint some other suitable persons as such.

And the Court having considered said Petitions and the answer and amended answer filed by the State of Florida through its Comptroller J. M. Lee, and the motion and amended motion of the State of Florida to dismiss the said Petition filed by Dora Miller and Harold M. Davidson, and the Court having also considered each and all of the answers filed by various heirs of said Olof Zetterlund and of the legatees of Olof Zetterlund, deceased, under his said Will, and the Court having heard the testimony submitted by the parties to said proceedings, and having examined and considered all of the Exhibits introduced by the respective parties, and having carefully considered the Petitions filed, and each and every of the Answers filed, the testimony, the evidence and exhibits, and after due consideration thereof, finds that the said Olof Zetterlund, deceased, was at the time of his death, on, to wit, the 21st day of August, 1945, a resident and citizen of the State of Florida and the County of Dade, and that his said Last Will and Testament was rightfully and lawfully admitted to probate in Dade County, Florida, on September 6, 1945, as heretofore ordered.

It is therefore, ordered, adjudged and decreed that the said Petition of the State of California by and through its Comptroller Harry B. Riley, and the said Petition of Dora [fol. 134] Miller and Harold M. Davidson, and each and every the prayers thereof, be and the same are hereby denied, and that the said Will of Olof Zetterlund, deceased, heretofore admitted to probate in this Court remain in the records thereof, and that the probate proceedings thereon continue and proceed as an original and domiciliary administration and proceeding in this State and County.

It is further ordered that the Motion and Amended Motion of the State of Florida by and through its Comptroller, J. M. Lee, to dismiss the Petition of Dora Miller and Harold M. Davidson for Revocation of Probate be denied, by reason of the foregoing findings and Order on the facts.

Done and ordered at Miami, Dade County, Florida, this 31st day of December, A. D. 1946.

(Sgd.) W. F. Blanton, County Judge. (C. J. Seal.)

[fol. 135] CERTIFICATE

I, Gladys V. Sullivan, Clerk of the County Judge's Court in and for the County of Dade and State of Florida, do hereby certify that the above and foregoing is a true and correct copy of a portion of the original administration proceedings instituted on August 30, 1945, in the County Judge's Court in and for Dade County, Florida, entitled: "In re: Estate of Olof Zetterlund, Deceased", Probate No. 16,650, as shown by Items numbered 1 to 15, inclusive, of the foregoing transcript of record, as the same remain on file and record in this court.

And I further certify that said orders, and each of them, are in full force and effect, and that all other instruments as shown in the foregoing transcript, have been duly filed in the records of this Court.

In witness whereof, I have hereunto set my hand and the official seal of said Court at Miami, Florida, this 14th day of January, A. D. 1947.

Gladys V. Sullivan, Clerk, County Judge's Court.
(Seal.)

[fol. 136] Exemplified copy.

County Judge's Court

STATE OF FLORIDA,
County of Dade:

I, W. F. Blanton, County Judge and sole presiding Judge of the County Judge's Court, do hereby certify that Gladys V. Sullivan, whose name is subscribed to the foregoing certificate was at the time of signing and sealing the same, Clerk of the County Judge's Court of Dade County, aforesaid, duly appointed and qualified to office. And that full faith and credit are and of right should be given to all her official acts as such, in all courts of record and elsewhere and that her attestation is in due form of law and by the proper officer.

Given under my hand and official seal this 14th day of January, A. D. 1947.

W. F. Blanton, Judge of the County Judge's Court.
(Seal.)

County Judge's Court

STATE OF FLORIDA,
County of Dade:

I, Gladys V. Sullivan, Clerk of the County Judge's Court in and for Dade County, Florida, do hereby certify that W. F. Blanton, whose signature is appended to the foregoing certificate was at the time of signing the same, County Judge and sole Presiding Judge of the County Judge's Court in and for said County, duly commissioned and qualified; and that full faith and credit are and of right should be given to all his official acts as such in all courts of record and elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Miami, Dade County, Florida, this 14th day of January, A. D. 1947.

Gladys V. Sullivan, Clerk of the County Judge's Court. (Seal.)

[fol. 137] IN THE COUNTY JUDGE'S COURT IN AND FOR DADE COUNTY, FLORIDA. IN PROBATE

No. 16,650

In Re: Estate of OLOF ZETTERLUND, Deceased

Letters Testamentary

To All Whom These Presents Shall Come, Greeting:

Whereas, Olof Zetterlund late of the County aforesaid, died on the 21st day of August A. D. 1945, leaving his Last Will and Testament, which having been satisfactorily proven, was on the 6th day of September, A. D. 1945, duly admitted to probate and record in this Court. And as by said Last Will and Testament, it appears that Samuel Nelson was named therein as Executor thereof and he having prayed the Court to grant Letters Testamentary thereon to Samuel Nelson as such Executor and having, in due form of law, taken the prescribed oath, and performed all other acts necessary to his legal qualifications as such Executor.

Now, therefore, know ye, That I, W. F. Blanton, County Judge in and for the County aforesaid by virtue of the power and authority by law in me vested, do hereby declare the said Samuel Nelson, duly qualified by the laws of said State to act as Executor of said Last Will and Testament with full power, by the provisions of law and by virtue of these presents, to administer all and singular the goods, chattels, rights and credits, lands, tenements and hereditaments of said Olof Zetterlund, and to ask, demand, sue for, recover and receive the same; to pay the debts in which the said Olof Zetterlund stood bound, so far as the assets shall extend and the law direct, and duly entitled to have and hold for the purposes directed in and by the said Last Will and Testament, all the estate of said Olof Zetterlund during the legal continuance of his administration, until the same shall expire by virtue of the provisions of said Last Will and Testament, or until the power and authority hereby granted shall be duly revoked according to law.

In testimony whereof, I hereunto set my hand and affix the seal of the County Judge's Court of the County aforesaid, at Miami, Florida, this 20th day of January, A. D. 1947.

W. F. Blanton, County Judge. (C. J. Seal.)

The foregoing instrument was filed January 20, 1947 and duly recorded and verified in Record of Wills.

W. F. Blanton, County Judge, Gladys V. Sullivan, Clerk. (C. J. Seal.)

[fol. 138] State of Florida,
Dade County:

I, Jennie L. Blanton, Clerk of the County Judge's Court, Dade County, Florida, do hereby certify the within and foregoing is a true and correct copy of the original as it appears on record and file in the office of the County Judge of Dade County, Florida, and that same is in full force and effect.

Witness my hand and Seal of the County Judge's Court at Miami, Florida, this the 20th day of January, A. D. 1947.

Jennie L. Blanton, Clerk County Judge's Court.

[fol. 139]

Beverly's Exhibit 3—Probate Proceedings of the Estate of Olof Zetterlund, Deceased, in California

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Case No. 246797

In the Matter of the Estate of OLOF ZETTERLUND, Deceased

Petition for Probate. Codicil to Will

To the Superior Court of the County of Los Angeles, State of California:

The petition of Dora Miller and Harold M. Davidson of the County of Los Angeles, State of California, respectfully states:

1. That Olof Zetterlund died on or about the 21 day of August, 1945, at San Gabriel, California.

2. That said deceased at the time of his death was a resident of the County of Los Angeles, State of California, and left property in the County of Los Angeles, State of California.

3. That the character and estimated value of the property of said estate, and the probable annual income therefrom, so far as known to your petitioner, are as follows:

Bank accounts, stock in a Florida corporation, and mortgages, $850,000.00.

Annual income estimated at $22,700.00.

[fol. 140] 4. That said deceased left a Will bearing date the 9th day of June, 1937, and a codicil to said Will dated August 3, 1945, which your petitioners allege to be the last Will of said deceased, and which is presented herewith; that a copy of said will is annexed to this petition, marked exhibit "A."

5. That Dora Miller and Harold M. Davidson named in said Will as co-executor thereof, consents to act as such co-executors.

6. That the names, ages and residences of the devisees and legatees named in the said Will of deceased are as follows:

See Attached Schedule.

7. That the names, ages and residences of the heirs at law of said deceased, so far as known to your petitioner, are as follows:

See Attached Schedule.

[fol. 141] 8. That at the time said Will was executed, to-wit, on the said 9th day of June, 1937, the testator was over the age of eighteen years, to-wit, of the age of — years, or thereabouts, and was of sound and disposing mind, and not acting under duress, menace, fraud, or undue influence, and was in every respect competent, by last Will, to dispose of all his estate.

9. * That said Will is in writing signed by the said testator and attested by two subscribing witnesses. Your petitioners allege that said testator acknowledged the Will in the presence of said witnesses, present at the same time, and that said witnesses signed the said Will at the request of said testator and in the presence of said testator, and your petitioners further allege that said witnesses, at the time of attesting the execution of said Will, were competent.

Wherefore, your petitioners pray that the said Will may be admitted to probate, and that Letters Testamentary be issued to your petitioners, and that for that purpose a time be appointed for proving said Will, and that due notice thereof be given according to law, and that all necessary and proper orders may be made in the premises.

Dated August 24, 1945.

Dora Miller, Harold M. Davidson.

[fol. 142] I, Olof Zetterlund, a citizen of Dade County, Florida, being of sound mind and memory, do hereby make,

---

* If an Holographic Will, so state and strike out paragraph.

publish, and declare this my Last will and testament, hereby revoking and annulling all former wills by me made, in manner following, that is to say:

First: I desire that my executors hereinafter named, shall pay out of my estate all my just debts and funeral expenses without delay after my decease.

Second: I give and bequeath to my brother Carl, brother Gustaf, and sister Karin of Chicago, all my household goods, jewelry, library, personal clothing, and automobile, etc., to use, distribute or sell, according to their pleasure.

Third: I give and bequeath to each of my brother Carl, brother Gustaf, and sister Karin, Two Thousand Dollars ($2,000.00) to each of them.

Fourth: I give and bequeath to my faithful housekeeper, Miss Dora Miller, Nine Thousand Dollars ($9,000.00).

Fifth: I give and bequeath to Mrs. Ellen Burdet, cashier in my hotel, for faithful service, Nine Thousand Dollars ($9,000.00).

Sixth: I give and bequeath to my niece, Augusta Zetterlund, of Arvika, Sweden, Five Hundred Dollars ($500.00).

Seventh: I give and bequeath to Theodore Zetterlund of Milwaukee, United States, Five Hundred Dollars ($500.00).

Eighth: I give and bequeath to my sister Britta, Arvika, Sweden, Ten Hundred dollars ($1,000.00).

Ninth: I give and bequeath to my brother Johannes, Amotfors, Sweden, Ten Hundred dollars ($1,000.00).

Tenth: I give and bequeath to my niece Hulda Zetterlund, Kolstad, Sweden, Five Hundred Dollars ($500.00).

Eleventh: I give and bequeath to my nephew Gunard Zetterlund, Arvika, Sweden, Ten Hundred dollars ($1,000.00).

Twelfth: I give and bequeath to my niece Inga Zetterlund, Arvika, Sweden, Ten Hundred Dollars ($1,000.00).

[fol. 143] Thirteenth: All the rest of my estate, such as real estate, residue, and remainder of my personal estate, goods and chattels of whatever nature or kind it may be, and after monies realized from the same, except what is already disposed of and described above under this will, shall be divided into twenty-seven (27) parts and I give and bequeath one part of the twenty-seven (27) parts to each of my relatives described as follows:

Fourteenth: I give and bequeath to my sister Britta and brother Johannes one part of the twenty-seven (27) parts to each of them. In the event of that anyone of them shall die before I am deceased their children shall inherit their share.

Fifteenth: I give and bequeath to my brother Carl, brother Gustaf, and sister Karin one part of the twenty-seven (27) parts to each of them.

Sixteenth: I give and bequeath to my brother Johannes' children, namely, Albert, David, Hulda, Signe, Gustaf and Carl one part of the twenty-seven (27) parts to each of them.

Seventeenth: I give and bequeath to my sister Britta's children, namely, Ruth, Naime, Hanna, Sara, Gustaf and Enfrid one part of the twenty-seven (27) parts to each of them.

Eighteenth: I give and bequeath to my sister Kajsa's children (Kajsa is now deceased) namely, Samuel, Paul, Hanna, Ester, Lydia and Constance one part of the twenty-seven (27) parts to each of them.

Nineteenth: I give and bequeath to my brother Eric's children (Eric is now deceased), namely, Hulda, Maria, Paul and John, one part of the twenty-seven (27) parts to each of them.

Twentieth: At the present my estate consists principally of land and improved real estate and a hotel, and it is my desire that the executors of my last Will and Testament shall not sacrifice too much of its value in order to convert the same into money.

Twenty-First: Lastly: I hereby nominate, constitute, [fol. 144] and appoint my nephew Samuel Nelson of Maplewood, New Jersey; and Arvid Ericson of Toledo, Ohio, the executors of this, my last will and testament, hereby revoking all former wills by me made.

Twenty-Second: I know that there will be a great deal of work in connection with a proper execution of this will; I therefore give and bequeath to Samuel Nelson and Arvid Ericson Ten Hundred dollars ($1,000.00), to each of them as a compensation for their work and good judgment in connection herewith.

Twenty-Third: If anyone of my heirs resorts to the Courts to break the provision of this will, the bequests to such heirs will be revoked by said act, and the said heir's portion will go into my estate to be divided among the other legatees.

Twenty-Fourth: If anyone of my heirs, except sister Britta, sister Karin, brother Johannes, brother Carl and brother Gustaf, who have been bequeathed one part of the twenty-seven (27) parts, as described in this my last will, should die before I am deceased, his or her part of the twenty-seven (27) parts will go to the general fund and be inherited, pro rata, by all the remaining heirs.

In witness thereof I have herein set my hand and seal this 9th day of June in the year of 1937.

Olof Zetterlund.

The above instrument was, at the date thereof, signed, sealed, published and declared, by the said Olof Zetterlund, as and for his last will and testament in presence of us, who, at his request, and in his presence, and in the presence of each others, have subscribed our names as witness thereof.

E. L. Lockhart, P. A. Williams.

Admitted to Probate Nov. 13, 1945. Attest: J. F. Moroney, County Clerk. Ed. Roberts, Deputy.

[fol. 145] Codicil to Last Will and Testament of Olof Zetterlund

I, Olof Zetterlund, a citizen of the City of San Gabriel, county of Los Angeles, State of California, being of sound mind and memory, do hereby declare this to be a Codicil to my last Will and Testament, made and executed by me on the 9th day of June, 1937, in the following manner:

First: I hereby re-affirm and re-allege each and every allegation and paragraph in my former Will, except Paragraph 21 and Paragraph 22 thereof. Inasmuch as I am now a resident of the County of Los Angeles, State of California, I wish to nominate and appoint local co-executors. I hereby delete Paragraph 21 from my former Will, and in place thereof make a new Paragraph 21, reading as follows:

Lastly, inasmuch as I am now a resident of Los Angeles County, California, I hereby nominate, constitute and appoint Dora Miller of San Gabriel, California, and Harold

M. Davidson, of Alhambra, California, as co-executors of my Last Will and Testament, and direct and authorize that they serve without bond, and it is my desire that the co-executors shall not sacrifice too much of the value of my estate unless in their opinion, it shall be absolutely necessary to do so in order to properly probate my Will.

Second: I hereby delete from my former Will, Paragraph 22 wherein I gave and bequeathed to Samuel Nelson and Arvid Ericson, whom I had named as executors of that Will, $1,000.00 each for their work as executors. It is my intention and desire that the newly named and appointed co-executors, Dora Miller and Harold M. Davidson, shall only receive as remuneration for their services as my co-executors, such sum as the State of California provides shall be paid to the co-executors of my Last Will and Testament, and said sum paid for the services of co-executors shall be [fol. 146] that set forth in the California statutes.

Third: I wish to add one additional paragraph to my Will, being Paragraph 25, reading as follows:

If any person or persons other than those named in this document shall prove themselves to be my legal heir and entitled to take any portion of my estate, to such person or persons, individually, I give the sum of One Dollar ($1.00) only.

Fourth: No other portion or paragraph of my Will is changed or altered in any manner whatsoever except as herein set forth as to Paragraph Twenty-First and Paragraph Twenty-Second of my Will of June 9, 1937, and the addition of Paragraph Twenty-Fifth.

In Witness Whereof, I have hereunto set my hand this 3rd day of August, 1945.

Olof Zetterlund.

The above instrument was, at the day thereof, signed, sealed, published and declared, by the said Olof Zetterlund, as and for a Codicil to his Will, in the presence of us, who, at his request, and in his presence, and in the presence of each other, have subscribed our names as witnesses thereof.

Pearl Siudelar of Los Angeles, Charles Siudelar of Los Angeles.

Codicil admitted to Probate Sept. 28, 1945.

Attest: J. F. Moroney, County Clerk, Ed Roberts, Deputy.

[fol. 147] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 246797

In the Matter of the Estate of Olaf Zetterlund, Deceased

Affidavit of Service of Notice of Time For Probate of Will, etc., by Mailing

Notice of Hearing of Petition for Probate of Codicil to Will No. 246,797

In the Superior Court of the State of California, in and for the County of Los Angeles.

In the Matter of the Estate of Olaf Zetterlund, Deceased.

Notice is hereby given that the petition of Dora Miller and Harold M. Davidson for the probate of the codicil to the will of the above-named deceased and for the issuance of Letters Testamentary thereon to the Petitioners will be heard at 9:30 o'clock A. M., on September 28, 1945, at the court room of Department 25 of the Superior Court of the State of California, in and for the County of Los Angeles.

Dated August 31, 1945.

J. F. Moroney, County Clerk. By C. Z. Baker, Deputy.
Harold M. Davidson, 317 W. Main St., Alhambra, Calif., Attorney for Petitioners. (27299) Sept. 5 Sept 15.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

G. Artz, being duly sworn, deposes and says: that the business address of affiant is 121 North Broadway, in the City of Los Angeles, in the County of Los Angeles, State of California; that she was, at the time of the service herein referred to, a citizen of the United States, a resident of the County where the mailing herein referred to occurred, over the age of eighteen years and not interested in the above estate; that on the 5th day of September, 1945 affiant deposited in the United States Mail in said City, in separate envelopes, a true copy of the notice attached hereto, of the time and place appointed for the hearing of the petition for the probate of the will of the aforesaid decedent; that said envelopes were addressed as follows:

Karen Zetterlund, 1454 Berwyn Avenue, Chicago, Illinois.
Augusta Zetterlund, Arvika, Sweden.
Theodore Zetterlund, Milwaukee, Wisconsin.
Dora, Miller, 525 North Del Mar Avenue, San Gabriel, California.
Mrs. Ellen Burdet, 528 Collins Avenue, Miami Beach, Florida.
Hulda Zetterlund, Kollstad, Sweden.
Gunard Zetterlund, Arvika, Sweden.
Inga Zetterlund, Arvika, Sweden.
Albert Zetterlund, General Delivery, Los Angeles, California,
David Zetterlund, General Delivery, Los Angeles, California.
Gustaf Zetterlund, General Delivery, Los Angeles, California.
Carl Zetterlund, General Delivery, Los Angeles, California.
Gustaf Zetterlund, General Delivery, Los Angeles, California.
Enfrid Zetterlund, General Delivery, Los Angeles, California.
Paul Zetterlund, General Delivery, Los Angeles, California.
John Zetterlund, General Delivery, Los Angeles, California.

that each of said envelopes was sealed and deposited in the mail with the postage thereon fully prepaid; that at the time of deposit of the aforesaid envelopes addressed to places within the United States, its Territories, Possessions, Military and Naval Bases, there was delivery service by United States mail at the places so addressed; that at the time of deposit of the aforesaid envelopes addressed to all other places, there was regular communication by mail between said place of mailing and all said other places.

G. Artz.

Subscribed and sworn to before me, this 5th day of September, 1945. Alice A. Hill, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fol. 148] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 246797

In the Matter of the Estate of Olof Zetterlund, Deceased.

Amended Affidavit of Service of Notice of Time for Probate of Will, etc., by Mailing

Notice of Hearing of Petition for Probate of Codicil to Will.

No. 246,797

In the Superior Court of the State of California, in and for the County of Los Angeles.

In the Matter of the Estate of Olof Zetterlund, Deceased.

Notice is hereby given that the petition of Dora Miller and Harold M. Davidson for the probate of the codicil to the will of the above-named deceased and for the issuance of Letters Testamentary thereon to the Petitioners will be heard at 9:30 o'clock A. M., on September 28, 1945, at the court room of Department 25 of the Superior Court of the State of California, in and for the County of Los Angeles.

Dated August 31, 1945.

J. F. Moroney, County Clerk. By C. Z. Baker, Deputy.
Harold M. Davidson, 317 W. Main St., Alhambra, Calif., Attorney for Petitioners. (27299) Sept. 11 Sept 21.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

G. Artz, being duly sworn, deposes and says: that the business address of affiant is 121 North Broadway, in the City of Los Angeles, in the County of Los Angeles, State of

California; that she was, at the time of the service herein referred to, a citizen of the United States, a resident of the County where the mailing herein referred to occurred, over the age of eighteen years and not interested in the above estate; that on the 11th day of September, 194- affiant deposited in the United States Mail in said City, in separate envelopes, a true copy of the notice attached hereto, of the time and place appointed for the hearing of the petition for the probate of the will of the aforesaid decedent; that said envelopes were addressed as follows:

Karen Zetterlund, 1454 Berwyn Avenue, Chicago, Illinois.
Augusta Zetterlund, Arvika, Sweden.
Theodore Zetterlund, Milwaukee, Wisconsin.
Dora Miller, 525 North Del Mar Avenue, San Gabriel, California.
Mrs. Ellen Burdet, 528 Collins Avenue, Miami, Beach, Florida.
Hulda Zetterlund, Kollstad, Sweden.
Gunard Zetterlund, Arvika, Sweden.
Inga Zetterlund, Arvika, Sweden.
Albert Zetterlund, Los Angeles, California.
David Zetterlund, Los Angeles, California.
Gustaf Zetterlund, Los Angeles, California.
Carl Zetterlund, Los Angeles, California.
Gustaf Zetterlund, Los Angeles, California.
Enfrid Zetterlund, Los Angeles, California.
Enfrid Zetterlund, 3409 Jay Street, Sacramento, California.
Fred E. Renata, 3409 Jay Street, Sacramento, California.
Paul Zetterlund, Los Angeles, California.
John Zetterlund, Los Angeles, California.
Samuel Nelson, 2 Burnet Street, Maplewood, New Jersey.

that each of said envelopes was sealed and deposited in the mail with the postage thereon fully prepaid; that at the time of deposit of the aforesaid envelopes addressed to places within the United States, its Territories, Possessions, Military and Naval Bases, there was delivery service by United States mail at the places so addressed; that at the time of deposit of the aforesaid envelopes addressed to all other places, there was regular communication by mail between said place of mailing and all said other places.

G. Artz.

Subscribed and sworn to before me, this 11th day of September, 1945. Alice A. Hill, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fol. 149] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 246,797

In the Matter of the Estate of OLOF ZETTERLUND, Deceased

Order Admitting Codicil to Probate and for Letters Testamentary

The petition of Dora Miller and Harold M. Davidson for the probate of the Codicil of the Will of said deceased and for Letter Testamentary thereon coming regularly this day to be heard, and it being proved to the satsifaction of the Court that all notices of said hearing have been given as required by law, and thereupon the Court proceeds to hear the evidence and grants said petition,

It is ordered and adjudged by the Court that the said Olof Zetterlund died on the 21st day of August, 1945, leaving estate in the State of California, and was then a resident of the County of Los Angeles, State of California; that the document herein filed purporting to be the codicil to Last Will and Testament of said deceased, be admitted to probate. That Dora Miller and Harold M. Davidson be appointed co-executors and Letters Testamentary thereon issued to them upon their taking the oath required by law and they not be required to furnish bond.

Newcomb Condee, Judge.

Dated: September 28, 1945.

[fol. 150] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Case No. 246,797

In the Matter of the Estate of OLOF ZETTERLUND, Deceased

Filed September 28, 1945, J. F. Moroney, County Clerk, by C. Z. Baker, Deputy.

Letters Testamentary

STATE OF CALIFORNIA,
County of Los Angeles, ss:

The last will of Olof Zetterlund, deceased, having been proved in the Superior Court of the County of Los Angeles, Dora Miller and Harold M. Davidson who are named therein as such, Co-executors hereby appointed Co-executors.

Witness J. F. Moroney, Clerk of the Superior Court of the County of Los Angeles, with the seal of the Court affixed, the 28 day of Sept., 1945.

By order of the Court. J. F. Moroney, County Clerk, by C. Z. Baker, Deputy. (Seal.)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

We do solemnly swear that we will support the Constitution of the United States, and the Constitution of the State of California, and that we will faithfully perform, according to law the duties of Co-Executors of the last Will and Testament of Olof Zetterlund, deceased.

Dora Miller, Harold M. Davidson.

Subscribed and sworn to before me, this 28th day of September, 1945. —— ——, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fol. 151] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Case No. 246,797

In the Matter of the Estate of OLOF ZETTERLUND, Deceased

Supplemental Order Admitting Will to Probate and Supplementing Order heretofore made admitting Codicil to Probate.

The supplemental petition of Harold M. Davidson and Dora Miller to admit will to probate and to supplement the order heretofore made admitting codicil to probate, came on regularly to be heard on this 14th day of November, 1945, and it being proved to the satisfaction of the Court that all notices of said hearing have been given as required by law, and thereupon the Court proceeds to hear the evidence and grants said petition.

It is ordered and adjudged by the Court that the said Olof Zetterlund died on the 21st day of August, 1945, leaving estate in the State of California and was then a resident of the County of Los Angeles, State of California. That the document hereinbefore filed purporting to be the last will of said deceased, dated June 9, 1937 and a codicil to said will dated August 3, 1945, is declared to be the last will and testament of said deceased.

That the will dated June 9, 1937 is the will referred to in [fol. 152] the codicil. That the will of June 9, 1937, is the will, and each and every paragraph and allegation of said will are the allegations re-affirmed and re-alleged in Paragraph First in the codicil to last will dated August 3, 1945, and that Paragraphs Twenty-first and Twenty-second referred to in said codicil as being deleted from the former will, are Paragraphs Twenty-first and Twenty-second of the last will and testament of June 9, 1937. That the instrument re-affirmed and re-alleged in the codicil of August 3, 1945 is the same instrument as the last will and testament of June 9, 1937.

It is further ordered and adjudged that the record in this proceeding be supplemented to show that the will now admitted to probate dated June 9, 1937 is the will referred to in the codicil and that the order heretofore made appointing the petitioners Harold M. Davidson and Dora Miller, co-executors of the codicil of the last will and testament of Olof Zetterlund, is hereby supplemented to read, co-executors of the last will and testament dated June 9, 1937 and the codicil thereto dated August 3, 1945.

Dated: November 15, 1945.

Judge.

[fol. 153] Walter G. Danielson, 836 Title Insurance Building, Los Angeles, California. Telephone: Madison 2729, Attorney for C. E. Wallerstedt, Consul General of Sweden at San Francisco.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Case No. 246,797

In the Matter of the Estate of OLOF ZETTERLUND, Deceased

Request for Special Notice of Proceedings

To Dora Miller and Harold M. Davidson, executors of the will of the decedent and to Harold M. Davidson, their attorney, 317 West Main Street, Alhambra, California:

Request is hereby made upon you for special notice of all proceedings occurring in the above estate as provided by Section 1200 of the Probate Code of the State of California, by the undersigned, Walter G. Danielson, whose office address is 836 Title Insurance Building, 433 South Spring Street, Los Angeles 13, California (MAdison 2729) as the attorney for C. E. Wallerstedt, the Consul General of Sweden at San Francisco, who is the attorney-in-fact for Gunnard Zetterlund and Inge Fall, nee Zetterlund, heirs at law and legatees of the above decedent.

Dated: Los Angeles, California, December 28, 1945.

Walter G. Danielson, Attorney for C. E. Wallerstedt.

[fol. 154] STATE OF CALIFORNIA,
County of Los Angeles, ss:

MARJORIE PETERSON, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the county of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above entitled action; that affiant's business address is: 836 Title Insurance Building, 433 South Spring Street, Los Angeles 13, California, that on the 28th day of December, 1945, affiant served the within request for special notice of proceedings on the Executors of the will of the above decedent, by placing a true copy thereof in an envelope addressed to the attorney of record for said executors at the office address of said attorney, as follows: "Harold M. Davidson, 317 West Main Street, Alhambra, California"; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is a delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

Marjorie Peterson.

Subscribed and sworn to before me this 28th day of December, 1945. Walter G. Danielson, Notary Public in and for said County and State of California. (Seal.)

[fol. 155] In the Superior Court of the State of California in and for the County of Los Angeles

Probate No. 246797

In the Matter of the Estate of Olof Zetterlund, Deceased

Ernfrid E. Rensta, Contestant

Harold M. Davidson and Dora Miller, Respondents

Petition for Revocation of Probate of Codicil

To the Superior Court of the State of California, in and for the County of Los Angeles:

The petition of Ernfrid E. Renstra respectfully shows:

That on the 9th day of June, 1937, in the County of Dade, State of Florida, Olof Zetterlund, a citizen and resident of the State of Florida, made and executed his Last Will and Testament;

That the said Olof Zetterlund died on or about the 21st day of August, 1945, in the County of Los Angeles, State of California, and at the time of said death said Olof Zetterlund was a citizen and resident of the State of Florida;

That your petitioner is a nephew and heir at law of the said Olof Zetterlund and devisee and legatee under the terms [fol. 156] of the said Will, and is a person interested in the above-entitled matter;

That on or about the 20th day of September, 1945, on the petition of Dora Miller and Harold M. Davidson, the above-entitled Court made its order admitting to probate a document purporting to be the codicil to the said Will bearing date the 3d day of August, 1945, and at the same time the said Court made its order appointing Dora Miller and Harold Davidson the executors thereof; that thereafter the said Dora Miller and Harold M. Davidson qualified as such executors and are now the duly appointed, qualified and acting executors thereof; that on or about the 7th day of September, 1945, on the petition of Harold M. Davidson, the above-entitled Court made its order issuing to Harold M. Davidson Special Letters of Administration; and that on the 15th day of November, 1945, the said Court entered a supplemental order admitting to probate an exemplified copy of the said Will of Olof Zetterlund, deceased, and also admitting to probate the said document purporting to be a Codicil to the said Will;

That the probate of the said document purporting to be the Codicil to the Last Will of the said Olof Zetterlund, deceased, should be revoked on the following grounds:

First Ground.

That the said Olof Zetterlund, deceased, at the time of the alleged execution of the said document purporting to be Codicil to the Last Will of the said Olof Zetterlund, deceased, was not of sound and disposing mind.

Second Ground.

That the said document purporting to be Codicil to the Last Will of the said Olof Zetterlund, deceased, was not executed by said Olof Zetterlund, deceased, in the manner or form required by law for the execution of a Codicil.

Third Ground.

That at the time of his death the said Olof Zetterlund was eighty-five (85) years of age; that during the last year of his life and for some time prior thereto, by reason of his age and his physical condition, his mental faculties had become [fol. 157] so impaired that he was easily influenced by those in whom he had confidence; that the said Dora Miller is a young woman of the age of about forty (40) years; that during the last five years prior to his death the said Olof Zetterlund made the said Dora Miller his attorney in fact and confidential agent and she continued as such until his death; that during said time and up to the time of his death there existed a strange attachment on the part of said aged decedent for the said Dora Miller, induced by attentions given to the said decedent by the said Dora Miller; that this strange attachment existed to such an extent that during the said period and up to the time of the death of the said decedent he kept constant company with the said Dora Miller, and during a great deal of the time the said Dora Miller secluded herself with the said deceased and isolated the said decedent from his relatives and friends; that deceased consulted the said Dora Miller constantly about his business affairs and followed her advice explicitly both in matters of business, social and religious matters; said decedent reposed confidence and trust in said Dora Miller and she did control and influence his mind and actions to such an extent that the said deceased during said period did whatever Dora Miller suggested or instructed him to do; that the said decedent was a citizen and resident of the State of Florida, and that on or about July 1, 1942, the said decedent made a trip from the State of Florida to the State of California for his health, intending to remain in the State of California for only a short time; that the said Dora Miller accompanied the deceased on this trip and resided with the deceased in a home in the County of Los Angeles, State of California, at all times from the date of the arrival of the said deceased and the said Dora Miller in this State up to the time of the death of the deceased; that the said Dora Miller was a follower of the I AM religious movement, and through her influence over the decedent prevailed upon him to become a member of the said I AM religious movement; that during the said period of time and up to the time of his death the said Dora Miller succeeded in substituting her will for the will of the said decedent; that by virtue of the influence which the said Dora Miller exercised over the said decedent the said Dora Miller obtained from the said decedent a general Power of Attorney, dated January 26, [fol. 158] 1944, and that from said date the said Dora Miller acted as attorney in fact for the said deceased and carried on all business affairs for the said deceased as his attorney in fact; that for many months and up to the time when the said document purporting to be the Codicil to the Last Will and Testament of the said deceased was made, the said Dora Miller had employed one Harold M. Davidson of San Gabriel, California, an attorney at law, to act as her attorney; that the said Harold M. Davidson filed with the Superior Court of the County of Los Angeles, State of California, a petition for the appointment of the said Dora Miller as guardian of the person and estate of the said deceased; that the said petition alleged that the said deceased had been in failing health for a number of years and said Dora Miller had the sole care and responsibility of the said deceased and had been caring for and managing his properties and his estate as attorney in fact, and that the said deceased had no relatives in California and that said deceased, because of his age and his physical condition, was not capable of caring for his person or his estate; that the said Court, on May 23, 1945, entered its order appointing the said Dora Miller as guardian of the person and estate of the said Olof Zetterlund, an incompetent person; that from May 23, 1945, up to the time of the death of the decedent the said Dora Miller acted as guardian of the person and estate of said deceased; that the said decedent, on or about May 3, 1945, was suffering from a number of senile ailments and was unable to carry on a conversation and his mental faculties, because of his advanced age, were impaired; that the said Dora Miller, by substituting her will for and supplementing that of the decedent, and by taking advantage of the trust and confidence reposed in her by the said decedent, succeeded in having the decedent execute the said document purporting to be the Codicil to the Last Will of said decedent, bearing date of August 3, 1945, in which document the said Dora Miller and Harold M. Davidson were substituted as executors of the Estate of the said decedent in the place of Samuel Nelson and Arvid Ericson who had been named by the said deceased as co-executors under the said Last Will and Testament, and provided that the said Dora Miller and Harold M. Davidson receive compensation as co-executors as provided by the law of the State of California; that the Estate of the said decedent is valued at [fol. 159] approximately a million dollars ($1,000,000.00); that at the time of the execution of the said document purporting to be the Codicil to the said Last Will of the said decedent, the said decedent was not following the dictates of his own will but he was acting wholly under the said influence of the said Dora Miller, who suggested and dictated to him the terms of the said purported Codicil;

That the said purported Codicil was not the free and voluntary act of said decedent, but the making and execution thereof was procured by the undue influence of said Dora Miller.

Wherefore, your Petitioner prays that the order admitting to probate said pretended Codicil to the Last Will and Testament of said deceased be set aside and revoked; that the Special Letters of Administration heretofore issued to Harold M. Davidson be revoked; that the Letters Testamentary heretofore issued to Dora Miller and Harold M. Davidson be revoked; that the costs and expenses of your Petitioner be allowed him out of the said Estate; and for such other and further relief to the Court shall seem proper.

Dated: March 21, 1946.

Ernfrid E. Rensta, Petitioner.

O'Connor & O'Connor, by William V. O'Connor, Attorneys for the Petitioner.

[fols. 160-161] No. 246797

In the Matter of the Estate of OLOF ZETTERLUND, Deceased

STATE OF CALIFORNIA,
County of Los Angeles, ss.:

I, W. G. Sharp, County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, do hereby certify and attest the foregoing to be a full, true and correct copy of the original Petition for Probate Codicil to Will; Will and Codicil; Affidavits of Mailing (2); Order Admitting Codicil to Probate and for Letters Testamentary; Letters Testamentary; Supplemental Order Admitting Will to Probate and Supplementing Order Heretofore Made Admitting Codicil to Probate; Request for Special Notice of Proceeding and Petition for Revocation of Probate of Codicil; on file or of record in my office, and that I have carefully compared the same with the original. I further certify that said Will and Codicil was duly executed and proved agreeably to the laws and usages of the State of California and also that said Letters have not been revoked and are in full force and effect on this date.

In witness whereof, I have hereunto set my hand and annexed the seal of the Superior Court of the State of California, in and for the County of Los Angeles, this 18th day of January, 1949.

W. G. Sharp, County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles. (Seal.)

State of California,
County of Los Angeles, ss.:

I, C. L. Kincaid, Presiding Judge of the Superior Court of the State of California, in and for the County of Los Angeles, do hereby certify that W. G. Sharp is County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles (which Court is a court of record, having a seal); that the signature to the foregoing certificate and attestation is the genuine signature of the said W. G. Sharp as such officer; that the seal annexed thereto is the seal of said Superior Court; that said W. G. Sharp as such Clerk is the legal custodian of the original records or documents described and referred to in the foregoing certificate; is the proper officer to execute the said certificate and attestation, and such attestation is in due form according to the laws of the State of California.

In witness whereof, I have hereunto set my hand in my official character as such Presiding Judge, at the City of Los Angeles, County and State aforesaid, this 18th day of January, 1949.

C. L. Kincaid, Presiding Judge of the Superior Court of the State of California, in and for the County of Los Angeles.

State of California,
County of Los Angeles, ss.:

I, W. G. Sharp, County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles (which Court is a court of record, having a seal which is annexed hereto), do hereby certify that C. L. Kincaid whose name is subscribed to the foregoing certificate of due attestation was, at the time of signing the same, Presiding Judge of the Superior Court aforesaid and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further certify that the signature of the Judge above named to the said certificate of due attestation is genuine.

In witness whereof, I have hereunto set my hand and annexed the seal of the Superior Court, at my office in said County, this 18th day of January, 1949.

W. G. Sharp, County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles. (Seal.)

[fol. 162]

Nelson's Exhibit 45—Offer for Sale of Land Dated April 10, 1945

Samuel G. Jamison
Real Estate—Investments
Mercantile National Bank Bldg.
Miami Beach, Fla.
Phone 58-3807

April 10th, 1945.

Elsinore Beach Corporation,
528 Collins Avenue,
Miami Beach, Fla.

Attention Mr. James Q. Burdet:

I wish to submit an offer of $650,000.00 Six hundred and fifty thousand dollars, on behalf of my client Mr. Samuel Friedland, for the purchase of approximately eight hundred plus acres, located in Broward County, Florida, and bounded as follows: on the North, by Washington Street, in Hollywood, Florida; in the East by the Atlantic Oc-an for a distance of twenty six hundred and fifty feet, from the Sea Crest Hotel North to a certain parcel of land formerly owned by the Atlantic Shores Corporation; in the West by S. 14th Avenue, Hallandale, Florida; and in the South by the Hallandale Beach Road.

The above of Six hundred and fifty thousand dollars ($650,000.00) will be paid as follows: Two hundred and fifty thousand dollars Cash, and the balance of Four hundred thousand dollars to be taken back as a purchase money mortgage, upon the following terms and conditions: the mortgage is to run for a period of seven years from date of closing of this transaction, with interest at the rate of three per cent for the first two years, three and a half per cent for the following two years, and four percent for the balance of the last 3 years. The mortgage is to be amortized as follows: Fifteen thousand dollars to be paid one year after date of closing this transaction, fifteen thousand dollars the following year, twenty five thousand at the end of the third year, and fifty thousand dollars each year thereafter, until the expiration of the mortgage, at which time any unpaid balance is to be paid.

It is understood that I am to receive the usual ten per cent commission for my services as brooker.

Yours very truly, Samuel Jamison.

[fol. 163]

Resco's Exhibit 27—Telegraphic Acceptance of Offer of Sale of Land from Harold Davidson to Glynn Rasco, Dated April 13, 1945.

Western Union

QA40
Q.SA340 21=TDS Alhambra Calif 13 939A
Glyn O Rasco=
835 Lincoln Rd Miamibeach Flo=

Mr Zetterlund authorizes sale at six hundred fifty thousand dollars according to terms outlined in telephone conversation Confirmation follows air mail=

Harold M Davidson
1949 Apr 13 PM 12 48

[fol. 164]

Rasco's Exhibit 28—Letter of Acceptance from Dora Miller, Individually, to Glynn O. Rasco, Dated April 16, 1945

Harold M. Davidson
Attorney at Law
Suite 219 Professional Building
317 West Main Street
Alhambra, California

April 16, 1945.

Mr. Glynn O. Rasco
Attorney at Law
835 Lincoln Road
Miami Beach, Florida

Dear Mr. Rasco:

This letter will confirm my telegram authorizing the sale of the land for $650,000.00, in accordance with the terms detailed in our various telephone conversations.

It is my understanding that this property is being sold to Mr. Samuel Friedland, whom you assure me is a man of considerable wealth, and the owner of the Shellborne Hotel. The sale price is $650,000.00. The down payment is $250,000.00 cash. The balance of $400,000.00 to be taken back in the form of a purchase money mortgage, payable as follows:

$2,000.00 before the end of the first year, plus 3% interest on the unpaid balance; interest payable annually.

$20,000.00 before the end of the second year, plus 3% interest on the unpaid balance; interest payable annually.

$25,000.00 before the end of the third year, plus 3½% interest on the unpaid balance; interest payable annually.

$35,000.00 before the end of the fourth year, plus 3½% interest on the unpaid balance; interest payable annually.

$40,000.00 before the end of the fifth year, plus 4% interest on the unpaid balance; interest payable annually.

$50,000.00 before the end of the sixth year, plus 4% interest on the unpaid balance; interest payable annually.

The balance of $210,000.00 plus 4% interest is due and payable before the end of the seventh year.

It is our understanding that a 10% commission will be paid to Mr. Samuel G. Jamison, broker, on a pro rata basis. [fol. 165] It is also my understanding that you will make a settlement with McGarry and Weaver for, not to exceed $180,000.00, and you thought perhaps you could get them to $170,000.00. In other words, Mr. Zetterlund is to receive not less than $410,000.00 from the sale of this property.

Based on a pro rata settlement, if my figures are correct, Mr. Jamison will be paid as follows:

.3846% of $65,000.00 out of the down-payment.

.0308% of $65,000.00 of the payment of $20,000.00 at the end of the first year.

.0308% of $20,000.00 payment at the end of the second year.

.0384% of the $25,000.00 payment at the end of the third year.

.0538% of the $35,000.00 payment at the end of the fourth year.

.0616% of the $40,000.00 payment at the end of the fifth year.

.0769% of the $50,000.00 payment at the end of the sixth year.

.3231% of the balance of $210,000.00 payment to be paid on or before the end of the seventh year.

MrGarry and Weaver will receive the same percentage of payments as the payments are made, to correspond with the percentages of payment paid to Mr. Jamison. If you are able to settle with McGarry and Weaver for $170,000.00, their percentage of .3846 and the same percentage of the $65,000.00 commission which is to be paid out of the down payment of $250,000.00, will amount to $90,381.00, which will give Mr. Zetterlund a net out of the down payment, in the sum of $159,619.00. It is further understood that from the entire sale price of this property, Mr. Zetterlund is to pay no income tax.

The balance due McGarry and Weaver is to be secured by a second mortgage subject to and subsequent to the $400,000.00 purchase money mortgage. The $400,000.00 purchase money mortgage is to have a release clause releasing a percentage of the beach frontage, if desired, as each payment is made, and as the beach frontage relates to the entire acreage, and as the square footage of the beach property relates to the square footage of the entire property being sold, and the greater percentage of the beach frontage to remain as security for the payment of this money until the entire balance has been paid.

Yours very truly, (S.) Dora Miller.

[fol. 166]

Nelson's Exhibit 50—Second Letter of Acceptance, from Dora Miller as Attorney in Fact for Olof Zetterlund to Glynn Rasco, Bearing Date April 20, 1945.

Harold M. Davidson
Attorney at Law
Suite 219 Professional Building
317 West Main Street
Alhambra, California

April 20, 1945.

Mr. Glynn O. Rasco
Attorney at Law
835 Lincoln Road
Miami Beach, Florida

Dear Mr. Rasco:

This letter will confirm my telegram authorizing the sale of the land for $650,000.00, in accordance with the terms detailed in our various telephone conversations.

It is my understanding that this property is being sold to Mr. Samuel Friedland, whom you assure me is a man of considerable wealth, and the owner of the Shellburne Hotel. The sale price is $650,000.00. The down payment is $250,000.00 cash. The balance of $400,000.00 to be taken back in the form of a purchase money mortgage, payable as follows:

$20,000.00 before the end of the first year, plus 3% interest on the unpaid balance; interest payable annually.

$20,000.00 before the end of the second year, plus 3% interest on the unpaid balance; interest payable annually.

$25,000.00 before the end of the third year, plus 3½% interest on the unpaid balance; interest payable annually.

$35,000.00 before the end of the fourth year, plus 3½% interest on the unpaid balance; interest payable annually.

$40,000.00 before the end of the fifth year, plus 4% interest on the unpaid balance; interest payable annually.

$50,000.00 before the end of the sixth year, plus 4% interest on the unpaid balance; interest payable annually.

The balance of $210,000.00 plus 4% interest is due and payable before the end of the seventh year.

It is our understanding that a 10% commission will be paid to Mr. Samuel G. Jamison, broker, on a pro rata basis. It is also my understanding that you will make a settlement with McGarry and Weaver, for, not to exceed $180,000.00, and you thought perhaps you could get them to $170,000.00. In other words, Mr. Zetterlund is to receive not less than $410,000.00 from the sale of the property.

[fol. 167] Based on a pro rata settlement, if my figures are correct, Mr. Jamison will be paid as follows:

.3846% of $65,000.00 out of the down-payment.

.0308% of $65,000.00 of the payment of $20,000.00 at the end of the first year.

.0308% of $20,000.00 payment at the end of the second year.

.0384% of the $25,000.00 payment at the end of the third year.

.0538% of the $35,000.00 payment at the end of the fourth year.

.0616% of the $40,000.00 payment at the end of the fifth year.

.0769% of the $50,000.00 payment at the end of the sixth year.

.3231% of the balance of $210,000.00 payment to be paid on or before the end of the seventh year.

McGarry and Weaver will receive the same percentage of payment as the payments are made, to correspond with the percentages of payment paid to Mr. Jamison. If you are able to settle with McGarry and Weaver for $170,000.00, their percentage of .3846 and the same percentage of the $65,000.00 commission which is to be paid out of the down payment of $250,000.00, will amount to $90,381.00, which will give Mr. Zetterlund a net out of the down payment, in the sum of $159,619.00. It is further understood that from the entire sale price of this property, Mr. Zetterlund is to pay no income tax.

The balance due McGarry and Weaver is to be secured by a second mortgage subject to and subsequent to the $400,000.00 purchase money mortgage. The $400,000.00 purchase money mortgage is to have a release clause, releasing a percentage of the beach frontage, if desired, as each payment is made, and as the beach frontage relates to the entire acreage, and as the square footage of the beach property relates to the square footage of the entire property being sold, and the greater percentage of the beach frontage to remain as security for the payment of this money until the entire balance has been paid.

Yours very truly, (S.) Olof Zetterlund, by (S.) Dora Miller, Attorney in fact.

[fol. 168] PLAINTIFFS' EXHIBIT 9-D

Nelson's Exhibit 9-D—Contract of Sale Dated June 9, 1945, Between "Elsinore Beach Corporation by Harold M. Davidson (S.) Harold M. Davidson, Proxy for Dora Miller, Guardian of the Person and Estate of Olof Zetterlund, an Incompetent Person", as Vendor and Samuel Friedland as Purchaser.

This agreement made and entered into this 9th day of June, 1945, by and between Elsinore Beach Corporation, a Florida Corporation, hereinafter called the "Seller", and Samuel Friedland, hereinafter called the "Buyer",

Witnesseth: That for and in consideration of the mutual promises of the parties to this agreement and the deposit made by the buyer on account of the purchase price as hereinafter set forth, it is agreed and understood as follows:

1. The Seller agrees to sell and the buyer agrees to buy the following described real estate situate, lying and being in Broward County, Florida, to wit:

A. For the purpose of identifying the land agreed to be sold and purchased, there is attached to this agreement a map or plat * of "Elsinore Beach Section and Vicinity" and the Seller and the Buyer agree that said map or plat be used for identification purposes in determining the land covered by this contract of sale and purchase. It is under-

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* (Omitted from this appendix.)

stood that said plat or map hereto attached shows the land thereon as plated into streets and lots, in certain parts, but that said land has been returned to acreage and neither of the parties, in using said plat for identification purposes, intend to recognize in any manner whatsoever that said land now contains streets, lots, blocks, sections or subdivisions. It is understood that there was a plat filed of record in the Public Records of Broward County, Florida, showing the land of the attached map as subdivided into lots, blocks, sections, streets, etc., but that after the filing of said plat, the subdivision was subsequently abandoned and the land returned to acreage.

B. The Seller represents that it owns, and agrees to convey by general warranty deed to the Buyer, all of the land shown on the attached map which is colored in blue and also the land shown on said map as colored in green, with the exception of the Intra Coastal Waterway and the Atlantic Ocean. With reference to the land shown on the map [fol. 169] in the color of green, it is understood that same is to be conveyed subject to any and all rights of the United States Government with reference to navigable waters, and swamplands that might be declared as property of the State of Florida.

C. The Seller also agrees to convey to the Buyer all of the land on the attached map which is shown in the color yellow, but same is to be conveyed by a quitclaim deed only, with the understanding however, that any and all right, title and interest of the Seller in and to the land shown on the attached may in the color yellow is to be conveyed by said quitclaim deed, without any warranty of title whatsoever, but with the warranty on the part of the Seller that it has not heretofore conveyed the property shown in yellow to any other person, firm or corporation whatsoever. The Buyer understands and enters into this agreement as to the property shown on the attached map in the color yellow, that the Seller only has what is commonly known as a "tax title" to said land and, therefore, agrees to convey only whatever right, title and interest it has, without any warranties, except as aforesaid.

D. It is distinctly understood and agreed by and between the Seller and the Buyer that the land shown on the attached may in the color pink is not owned by the Seller and is not covered by this agreement of sale and purchase in any manner whatsoever. The Buyer enters into this agreement as to the land shown on the attached map in the color pink with the understanding that such land has heretofore been conveyed by the Seller, or its predecessor in title, to other persons, firms or corporations.

E. The land shown on the attached map in white, which appears to be streets or avenues or boulevards, is intended to be covered by this agreement of sale and purchase and it is the intention of the Seller and the Buyer that such land shown in white as streets, avenues, boulevards, etc., is to be [fol. 170] conveyed by warranty deed to the Buyer. However, it is distinctly understood that the portion intended to be covered by this agreement of purchase and sale, insofar as the color white is concerned, is only the portion south of Washington Street, east of S. E. 14th (8th) Avenue, north of Hallandale Beach Road and west of the Intra Coastal Waterway. It is specifically understood that the portion shown in white on the attached map as Ocean Boulevard (State Road No. 140) and also Atlantic Boulevard, and also the portion in white lying adjacent to and immediately west of the Intra Coastal Waterway, is excluded from this agreement, and also the portion shown in white as the "Broadwalk". If the streets shown in white in the North Beach Section, in the lower right-hand corner of the attached map, lying between the Broadwalk and Ocean Boulevard, are actually dedicated to and accepted by the public and are in truth and in fact existing streets, courts, alleys, boulevards or avenues, by reason of which the Seller does not actually have title thereto, then and in that event, it is understood that the Seller is not required to convey title to same.

F. With reference to the land shown in blue, bounded as follows: East of the Intra Coastal Waterway, south of Buchanan Court, west of the Atlantic Ocean and north of the land shown in pink in the lower left hand corner, it is understood that the Seller has riparian rights thereto and agrees to convey such riparian rights in and by a general warranty deed. With reference to the land so described in this paragraph, it is understood by the seller and the Buyer that there are 2643 feet, more or less, of ocean frontage on the Atlantic Ocean. It is understood that good, sufficient and marketable title of record to the land described in this paragraph is one of the main considerations inducing the buyer to enter into this agreement, and should the title to the land described in this paragraph not be good, sufficient and marketable of record, the Buyer shall not be required to close this transaction and in such event, the deposit paid [fol. 171] on the purchase price shall be returned at the option of the Buyer and thereupon the Seller and the Buyer shall be released from all obligations hereunder.

G. The Seller is also to convey to the Buyer any right, title or interest in and to the land lying between the Atlantic Ocean and the Broadwalk, it being understood that the conveyance of any right, title and interest of the Seller in and to said land is to be conveyed only by quitclaim deed.

2. Notwithstanding any agreement herein contained on the part of the Seller to convey the land shown on the attached map, it is understood and agreed that if the Seller does not in truth and in fact own some minor portion of the land agreed to be sold and is unable to convey title to same, the transaction shall, nevertheless, be consummated and the value of said portion shall be determined by one of two appraisers, and shall be deducted from the purchase price. The parties to this agreement have agreed upon E. D. Keefer and Walter Wilson as appraisers agreeable to them to fix the valuation of the land which the Seller is unable to convey and either one of such appraisals seelcted by the Buyer shall be binding upon the parties in fixing the valuation and the valuation so found shall be deducted from the purchase price. It is specifically understood however, that this paragraph does not in any way relate to the land which has been described in paragraph F.

3. The total purchase price to be paid by the Buyer to the Seller for the land agreed to be conveyed hereunder, is the sum of $700,000. At the time of the closing of this transaction, the total cash to be paid shall be the sum of $350,000, which closing shall be within 60 days after the date of this instrument and if in the event that the purchaser does not close within said sixty days after the signing of this instrument, the purchaser shall forfeit the deposit made herein and this instrument shall become null and [fol. 172] void as though same had never been entered into

and the Buyer does not have any lien or cloud upon the property herein described or referred to nor shall the Buyer have any claim for damages or otherwise against the Seller, provided however that the title is good and marketable and the Seller has complied with all conditions on its part required. At the time of the execution and delivery of this agreement, the Buyer has made a deposit of $25,000 on account to be held in escrow by the National Title Company of Miami Beach, Florida, and in the event of the closing of this transaction such deposit shall be considered part of the cash at closing. The balance of the purchase price shall be secured by a purchase money mortgage in the principal sum of $350,000 securing negotiable promissory note or notes aggregating the sum of $350,000 payable as follows: $20,000 on or before one year from the date of closing; $25,000 on or before two years from the date of closing; $35,000 on or before three years from the date of closing; and $35,000 on or before four years from the date of closing, and the balance on or before five years from the date of closing. Such notes shall bear interest on the amount due from time to time at the rate of 4% per annum, interest payable semi-annually, it being expressly understood that the note or notes shall not be payable in more than the aggregate sum of $75,000 in any one year, except the last note payable on or before five years from the date of closing. Such purchase money mortgage shall contain a thirty day default clause and shall be in the form generally used in Dade County, Florida. Such purchase money mortgage shall contain release clauses as follows, or to like effect:

A. With reference to the land lying north of Buchanan Court, east of the Intra Coastal Waterway, south of Washington Street and west of the Atlantic Ocean as may be owned by the Seller, will be released upon the payment of the sum of $50,000; or portions thereof on a pro rata basis, as the number of feet in said portion bears to the sum of $50,000.

[fol. 173] B. As to the portion of the land described in paragraph 1 F, bounded as follows: East of the Intra Coastal Waterway, south of Buchanan Court, West of Ocean Boulevard and north of the land shown in pink, shall be released for the sum of $25,000; or portions thereof on a pro rata basis as the total number of feet in said land bears to the sum of $25,000.

C. As to the portion of land described in 1 F bounded as follows: South of Buchanan Court, east of Ocean Boulevard, West of the Atlantic Ocean and north of the land shown in pink, portions may be released upon the following basis: if for example 10% of said land is desired to be released, the mortgagor shall pay 10% of the then unpaid balance on the mortgage; if 20% of the land is desired to be released then 20% of the then unpaid balance on the mortgage shall be paid, and so on; provided, however, that the entire portion of the land referred to in this paragraph shall not be released except in the event of full payment of the mortgage indebtedness.

D. As to any portion of the land covered by this agreement lying west of the Intra Coastal Waterway, same may be released from the mortgage by the payment of a sum of money to be fixed by agreement between the mortgagor and the mortgagee or by either of the appraisers hereinabove mentioned. As to the portion of the land referred to in this paragraph lying west of the Intra Coastal Waterway, it is understood that the mortgage shall provide that same may be released for the sum of $150,000; or $75,000 for the portion north of the Boulevard, east of S. E. 14th Avenue, South of Washington Street and west of the Intra Coastal Waterway; or $75,000 for the portion west of the Intra Coastal Waterway, South of the Boulevard, east of S. E. 14th Avenue and north of Hallandale Beach Road.

It is understood that the title to the land agreed to be sold hereunder, is to be good and marketable of record, and free and clear of encumbrances except as herein otherwise stated, and subject to the rights of the United States Gov- [fol. 174] ernment, State of Florida, Broward County zoning and any easments or rights of way for public utilities, such as telephone, telegraph, water and gas.

The Seller shall furnish complete abstract or abstracts of title covering the land agreed to be sold hereunder, receipt of which is hereby acknowledged by the Buyer. In the event the title should not be found to be good and marketable of record, as hereinbefore described and set forth, and in accordance with the conditions set out herein, the Seller shall use reasonable diligence to make the title good and marketable of record as aforesaid and shall have a reasonable time so to do and after reasonable diligence and a reasonable time, if the title shall not be made good and marketable of record as aforesaid, the escrow agent shall return the deposit, and thereupon the Buyer and the Seller shall be released from all obligations hereunder or the Buyer shall have the right to take the title in its existing condition.

It is understood that the Buyer shall have the right to assign this agreement to a corporation and to take title in the name of such corporation provided the Buyer and members of his family shall be the controlling stockholders in such corporation.

Taxes for the year 1945 shall be pro rated as of the date of the closing.

This agreement is entered into subject to the approval of the Superior Court of Los Angeles County, State of California, Case No. 243553, petition for approval to be presented to the Court on or before June 22, 1945.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

Elsinore Beach Corporation, by Harold M. Davidson, Proxy for Dora Miller, Guardian of the Person and Estate of Olof Zetterlund, an Incompetent Person; Samuel Friedland (L. S.).

Signed, Sealed, and Delivered in the presence of Glynn O. Rasco, Louis Heiman.

[fol. 175]

Beverly's Exhibit 5—Second Contract of Sale Dated August 9, 1945

August 9, 1945.

National Title Company,
Lenox Road,
Miami Beach, Florida.

Gentlemen:

A transaction has been closed, being the same transaction in which you are acting as escrow agent in connection with the agreement dated June 9, 1945 between Elsinore Beach Corporation, a Florida corporation, as Seller and Samuel Friedland, as buyer. In connection with such agreement, there has been heretofore deposited with you, to be held in escrow, the sum of $25,000.

In the closing of such transaction, some of the instruments, proceedings and other matters which were necessary in order to close the transaction in accordance with such contract, were not available. Therefore, the buyer and the seller have agreed to hand you herewith a certain amount of cash which will be referred to hereafter, and also a promissory note dated August 9, 1945, in the amount of $350,000. from Beverly Beach Properties, Inc., to Elsinore Beach Corporation. You are requested to hold such cash and said note in escrow under the instructions given to you herein. We list below the instruments, proceedings and things remaining to be done in order to fully consummate the transaction in accordance with such contract:

1. Exemplified copy of proceedings in the Superior Court of the State of California in and for the County of Los Angeles, in the matter of the guardianship of the person and estate of Olof Zetterlund, an incompetent person, are to be procured and filed in Broward County, Florida. Such exemplified copy shall contain sufficient to show the due appointment of the guardian for Olof Zetterlund and also the proceedings by the Court authorizing the sale of the property involved in the contract above referred to.

1-A. Deliver quit-claim deed on property in above contract, deed to be from Olof Zetterlund, James Q. Burdet and Ellen W. Burdet, his wife, to Beverly Beach Properties, Inc. [fol. 176] 2. Secure the appointment of an ancillary guardian for the person and estate of Olof Zetterlund, an incompetent person, either in Dade County or Broward County. Upon the appointment and due qualification of such ancillary guardian, the Probate Court of either Dade or Broward County, whichever has jurisdiction, shall enter an order approving the sale of the property in accordance with the contract above mentioned.

3. Part of the real estate covered by the contract above mentioned, has title in the name of Olof Zetterlund and the quit-claim deed from the Estate of Olof Zetterlund to such

property was not available at this date. There is to be executed and delivered to Beverly Beach Properties, Inc., a quit-claim deed from the Estate of Olof Zetterlund, an incompetent person, such quit-claim deed to cover the property as shown upon Schedule C hereto attached.

4. The transaction has been closed by pro rating taxes on the basis of the 1944 taxes. When the amount of taxes on the property involved for the year 1945 is ascertained, should there be any additional pro ration due to the buyer by reason of the 1945 taxes being higher than 1944, such excess shall be paid by the Elsinore Beach Corporation to the buyer. If the amount for 1945 is lower than 1944, the buyer shall pay to the seller such excess. It is understood that the matters referred to in this paragraph are agreed to by the seller and the buyer, but the escrow on the cash and the promissory note is not to be effected in any manner whatsoever by the provisions of this paragraph.

5. The continuation of the abstracts delivered to the buyer in connection with this transaction shall include the following items, the expense of continuation to be borne by the seller, except the expense of showing the deed and [fol. 177] mortgage in such continuation:

(a) Show satisfaction of judgment of J. E. Thomas and Edna J. Thomas v. Atlantic Shores Corporation dated April 28, 1937 recorded in Judgment Book 1, page 424, Broward County Public Records.

(b) Show reversal of Supreme Court of Florida of judgment of Olof Zetterlund v. Atlantic Shores Corporation, dated April 24, 1929 recorded in Chancery Order Book 44, page 252, Broward County Public Records.

(c) Show cancellation of Tax Certificates Nos. 9280 for 1929 State and County taxes on Lot 31, Block 1 Atlantic Shores North Beach Section; No. 62468 for 1932 State and County taxes on Lot 31, Block 1 Atlantic Shores North Beach Section; No. 2870 for 1933 State and County taxes on Lot 31, Block 1 Atlantic Shores North Beach Section; No. 9469 for 1929 State and County taxes on Lot 8, Block 40, Atlantic Shores Boulevard Section. In connection with these tax certificates, if same have been lost, seller is to furnish affidavits to the Clerk of the Court as to such loss, and is to do everything possible to get the tax certificates cancelled provided no bond shall be required of the seller for any claim that might arise in the future by virtue of the failure to present cancellation of the said certificates.

(d) There shall be inserted in such continuation grants for deposit of spoil which are recorded in deed book 293, page 6, deed book 293, page 10, and deed book 238, page 128 of Broward County Public Records.

(e) Such continuation shall show agreement and stipulation for final decree in suit of Elsie A. Weaver and Paul D. McGarry v. Elsinore Beach Corporatoin, et al., Chancery No. 9367, which stipulation and agreement shall be briefly abstracted; and final decree in such suit which shall be shown in the abstract in full.

[fol. 178] (f) Show satisfaction in continuation of mortgage from Elsinore Beach Corporation to Paul D. McGarry, as Trustee.

6. There is to be furnished to the buyer at the expense of the seller, an abstract on the following property:

That part of the east half of Section 23, Township 51 South, Range 42 East as may lie East of the right of way of the Florida Coast Line Canal and Transportation Company and as may lie South of the Southern boundary line of Government Lot 1, Township 51 South, Range 42 East.

7. The buyer has raised a question as to the title being good and marketable on part of Lot 1, Block 13 of Atlantic Shores Lake Villa Section and also part of Lot 9, Block 14, Atlantic Shores Lake Villa Section. It is understood between the buyer and seller that the seller will use his best efforts to try to get the title straightened out as to such property. It is distinctly understood that the matters referred to in this paragraph shall have nothing whatever to do with the cash or promissory note deposited in escrow with you herewith.

8. There is to be furnished to the buyer a copy of the Minutes of Elsinore Beach Corporation and Halland Land Company showing that a resolution has been passed by the stockholders authorizing and approving the sale of the property owned by them respectively in the contract above referred to.

The closing statement approved by the seller and the buyer shows a balance due in closing of $150,984.91 due to the seller in addition to the deposit of $25,000. now in your hands. Therefore, there is handed you herewith the addi- [fol. 179] tional sum of $150,984.91 which you shall hold in escrow, together with the deposit of $25,000. and the promissory note above described.

When Myers & Heiman, attorneys for the buyer deliver to you a letter showing that all of the requirements hereinabove set forth have been met by the seller, or when satisfactory proof is produced to you that such requirements have been met, if you do not receive any letter from Myers & Heiman, you shall turn over to the Elsinore Beach Corporation the said sum of $150,984.91 and the sum of $25,000., totalling $175,984.91, and also the promissory note above described.

It is understood that your escrow fee shall be borne 50% by the seller and 50% by the buyer.

It is the intention of the seller and the buyer that all of the requirements as above set forth shall be fully met by the seller within 45 days from date. If the requirements have not been met within such period of time, the seller and the buyer shall give you further instructions as to your procedure under this escrow.

Very truly yours, Elsinore Beach Corporation, by Glynn O. Rasco, Attorney. Beverly Beach Properties, Inc., By Louis Heiman, Attorney.

Received promissory note above described and the sum of $150,984.91 and we agree to act as escrow agent in accordance with the above and foregoing instructions.

National Title Company, By A. H. Leiter, Asst. Secretary.

[fol. 180]

Schedule "C"

Title to the Following Described Property Is in Olof Zetterlund, and the Purchaser Should Receive Quitclaim Deed on These Lots:

Lots 1, 2, 3, 4, 5, 6, 7, Block 1; Lots 3, 11, 13 and 18, Block 2; Lots 1 and 4, Block 3; Lots 2, 3, 10, 13, 14 and 18, Block 5; Lots 2, 3, 4, 6, 10 and 12, Block 6; Lots 1, 8 and 16, Block 7; Lots 7, 9, 12, 13 and 14, Block 8; Lots 1, 2, 8, 9, 16, 17, 18 and

19, Block 9; Lots 1, 14, 15, 17, 18, 19, 20, Block 10; Lots 1, 2, 13 and 17, Block 30; Lot 12, Block 31; Lots 2, 6 and 7, Block 32; Lots 4, 7, Block 33; Lots 3, 6, 8, 11 and 13, Block 34; Lots 10, 13 and 15, Block 35; Lots 5 and 6, Block 36; Lots 2, 3, 4, 5, 6, 7, 13, 14, 15, 18 and 19, Block 37; Lots 3, 4 and 20, Block 38; Lots 1, 2, 3 and 17, Block 39; Lots 1, 2, 4, 6, 7, 9 and 11, Block 40; Lots 5, 6, 7 and 8, Block 41; of Atlantic Shores Boulevard Section, according to Plat thereof recorded in Plat Book 10, Page 16, of the current public records of Broward County, Florida.

Lot 24, Block 7, of Atlantic Shores, Greenwich Village Section, according to Plat thereof, recorded in Plat Book 10, Page 46 of the public records of Broward County, Florida.

Lot 6, Block 35, of Atlantic Shores, Lake Villa Section, according to Plat thereof, recorded in Plat Book 10, Page 40, of the current public records of Broward County, Florida.

(NOTE: Lot 6, Block 35, Atlantic Shores, Lake Villa Section, was acquired under Quitclaim Deed from Atlantic Shores Corporation to Olof Zetterlund dated July 2, 1941, recorded in Deed Book 389, Page 209.

The remaining lots above described were acquired in the following manner; to wit: Tax Deed from State of Florida to Hallandale Beach Improvement Co., dated June 17, 1931, recorded in Deed Book 225, Page 381; then Hallandale Beach Improvement Co. executed Quitclaim Deed to Halland Land Company, dated May 12, 1932, recorded in Deed Book 236, Page 64; and then Halland Land Company executed Quitclaim Deed to Olof Zetterlund dated May 18, 1933, recorded in Deed Book 243, Page 511. Therefore, Quitclaim Deed on the above described real estate should be executed to purchaser.)

[fol. 181]

Beverly's Exhibit 24—Third Contract of Sale Dated May 16, 1946

May 16, 1946.

Elsinore Beach Corporation,
c/o Glynn O. Rasco,
835 Lincoln Road,
Miami Beach, Florida.

Gentlemen:

This letter relates to that certain transaction reflected by an agreement dated June 9, 1945, by and between Elsinore Beach Corporation, a Florida corporation, as Seller, and Samuel Friedland, as Buyer, covering certain property therein described located in Broward County, Florida. This letter also relates to escrow agreement dated August 9, 1945, between Elsinore Beach Corporation and Beverly Beach Properties, Inc., with the National Title Company, with such subsequent instructions as have been given to the National Title Company.

You have requested Beverly Beach Properties, Inc., to release from the money in escrow the sum of $60,000.00, and we have agreed to release said sum of money upon the following conditions:

1. It is understood that you will not request and we will not be obligated to release any additional monies in this escrow or the promissory note in the hands of the escrow agent except upon the conditions stated in this letter.

2. There is a certain portion of the real estate involved in contract dated June 9, 1945, as to which Beverly Beach Properties, Inc., has not yet received good and marketable title. The bulk of the property as to which it has not received good and marketable title is owned by the Estate of Olaf Zetterlund, deceased, being a minor part of the real estate which was involved in the original contract dated June 9, 1945. We agree to accept a curator's deed as to the property involved in the contract which is owned by the Estate of Olaf Zetterlund, deceased, provided such curator's deed is issued pursuant to order of the County Judges Court in and for Dade County, Florida, in the Estate of Olaf Zet-

terlund, deceased, and provided further that the executors now qualified and acting in California for the Estate of Olaf Zetterlund, deceased, give their legal consent to the execution and delivery of such curator's deed, and approve the further consummation of the said contract. It is understood that the written consent of the executors of the Estate of Olaf Zetterlund, deceased, in California, must be given pursuant to a Court Order of the Probate Court in California, authorizing the executors to give such consent. When a good and sufficient curator's deed shall be delivered to us with the legal consent of the executors in California as aforesaid, we will then release all of the remaining funds being held by National Title Company in escrow, with the exception of $25,000.00. It is understood that the said remaining sum of $25,000.00 shall at that time, that is to say [fol. 182] when the curator's deed is executed and delivered, be placed by the National Title Company in Federal Savings and Loan Associations in Dade County, Florida, so that said sum of money will draw interest. The National Title Company will be instructed to hold such sum of $25,000.00 in escrow in accordance with the original instructions as amended from time to time, although the money is in their name in the Federal Savings and Loan Associations but to like effect as if the money was remaining in their own bank account. As the interest is paid by the Federal Savings and Loan Associations to National Title Company, they will be instructed to turn such interest over to Glynn O. Rasco, as Attorney for Elsinore Beach Corporation. As soon as an executor or administrator with the will annexed is appointed and qualified in Florida, either in domiciliary or ancillary proceedings, and Beverly Beach Properties, Inc., receives a good and sufficient executor's or administrator's deed, pursuant to order of the Florida Probate Court, the entire sum of $25,000.00 is to be then released.

3. In the event there is a final decree of the Circuit Court of Dade County, Florida, adjudicating that a curator's deed from the curator of the Estate of Olaf Zetterlund, deceased, in Florida is good and sufficient, then and in that event the sum of $25,000.00 is to be released without waiting for the appointment and qualification of an executor or administrator with the will annexed in Florida or California.

4. It is contemplated that it will take about 90 days from date to put you in the position to give a good and sufficient curator's deed with the legal consent of the California executors as above set forth. In the event it shall be impossible to get the legal consent of the California executors within such 90 day period and to give the curator's deed with such legal consent, then it is understood that we will give our consent to the transfer of the escrow funds from the National Title Company to Federal Savings and Loan Associations, so that such funds will begin to draw interest, with the understanding that such funds in the name of the National Title Company so deposited in the Federal Savings and Loan Associations will continue to be held in escrow pursuant to the original instructions as amended from time to time, but with the further understanding that the interest earned upon such funds will be paid to Glynn O. Rasco, as Attorney for Elsinore Beach Corporation.

Please indicate your approval of these agreements by signing such approval below.

Yours very truly, Beverly Beach Properties, Inc.,
by Louis Heiman, Secretary.

Myers & Heiman, by Louis Heiman, Attorneys for Beverly Beach Properties, Inc.

Elsinore Beach Corporation, James Q. Burdet,
President.

The above is hereby approved. Elsinore Beach Corporation, by Glynn O. Rasco, Attorney.

[fol. 182a]

Beverly's Exhibit 14—Assignment of First Contract of Sale by Friedland to Beverly Beach Properties, Inc., Dated August 9, 1945.

Assignment

Know all men by these presents:

That Samuel Friedland, for and in consideration of the sum of Ten Dollars and other good and valuable considerations to him in hand paid by Beverly Beach Properties, Inc., a Florida corporation, at or before the ensealing and delivery of these presents, receipt whereof is hereby acknowledged, has assigned, transferred and set over and by these presents does assign, transfer and set over to Beverly Beach Properties, Inc., a Florida corporation, its successors and assigns, that certain contract dated June 9, 1945, between Elsinore Beach Corporation, a Florida corporation, as seller, and Samuel Friedland, as buyer, covering land shown on map thereto attached of "Elsinore Beach Section and vicinity" in Broward County, Florida.

Beverly Beach Properties, Inc., a Florida corporation, as part of the consideration for this assignment, hereby assumes all obligations under the terms of said contract and agrees to carry out and perform said contract to like effect as if it had been named as buyer in said contract instead of Samuel Friedland.

And Samuel Friedland hereby authorizes the seller named in said contract to execute and deliver deed or deeds to Beverly Beach Properties, Inc., a Florida corporation, and to deal with Beverly Beach Properties, Inc., a Florida corporation, to like effect as if it had been named as buyer in said contract instead of Samuel Friedland.

In witness whereof he has hereunto set his hand and seal at Miami, Florida, this 9th day of August, 1945.

Samuel Friedland. (Seal.)

Signed, sealed and delivered in the presence of: Marie C. Sparks, Mildred F. Klingensmith.

[fol. 182b] STATE OF FLORIDA,
County of Dade, ss:

I hereby certify that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Samuel Friedland, to me well known to be the person described in and who executed the foregoing assignment, and acknowledged before me that he executed the same for the purposes therein expressed.

Witness my hand and official seal at Miami, County of Dade and State of Florida, this 9th day of August, 1945.

Leon Kaplan, Notary Public, State of Florida at Large. My commission expires: Oct. 18, 1948. (Seal.)

[fol. 183]

Nelson's Exhibit 33-E—Extension Agreement Dated October 8, 1945

Law Offices
Myers & Heiman
Seybold Building, Miami 32, Florida

October 8, 1945.

National Title Company,
1661 Lenox Avenue,
Miami Beach 39, Florida.

Re: Our File #1956—Beverly Beach Properties, Inc.—
Elsinore Beach Corporation

Gentlemen:

With reference to the transaction involved in the escrow under deposit receipt dated the 9th day of June, 1945, in which Elsinore Beach Corporation is seller and Samuel Friedland is buyer, covering property in Broward County, Florida, we have received a request from Glynn O. Rasco, Esquire, that the time for closing the transaction be extended for a period of ten days from date. We are glad to accede to the request of the seller, through him, that the time for closing be extended and you are hereby notified accordingly that the time is so extended.

The contract in this transaction was assigned by Samuel Friedland to Beverly Beach Properties, Inc. and it hereby consents to the extension.

Very truly yours, Beverly Beach Properties, Inc., by
Louis Heiman, its authorized agent and attorney.

LH:MCS.

[fol. 184]

Nelson's Exhibit 37—Extension Agreement Dated December 14, 1945

Law Offices
Myers & Heiman
Seybold Building, Miami 32, Florida

December 14, 1945.

Mr. Glynn O. Rasco,
Attorney-at-Law,
835 Lincoln Road,
Miami Beach, Florida.

In re: Beverly Beach Properties, Inc.—Elsinore Corporation. Our File No. 1956

Dear Glynn:

On November 27th you sent us statement prepared by Mr. Burdet regarding taxes on the land involved in the above mentioned transaction. You will recall that the tax bills include certain lands which were not being purchased by our client. We sent check for the payment of the entire taxes to the Tax Collector for Broward County, Florida, and we have received the tax receipts. We requested that separate tax receipts be prepared for Halland Land Company and also separate tax receipts as to our client. Enclosed you will find the following tax receipts:

1. Tax Receipt No. 8171 for 1945 county taxes in the amount of $52.90, on Lots 7 to 30, Block A, Padgett & Johnson Subdivision, Outlot 1, and the E½ of the NE¼ of the NE¼ of the NW¼ of Sec. 28, Twp. 51 South, Range 42 East, and the N½ of Outlot 9, Subdivision of Sec. 28, Twp. 51 South, Range 42 East, and the South ½ of Outlot 9, Subdivision of Sec. 28, Twp. 51 South, Range 42, East.
2. Tax Receipt No. 8172 for 1945 county taxes in the amount of $3.19, on Lot 1, Block B, Padgett & Johnson Subdivision of Outlot 1.
3. Tax Receipt No. 8173 for 1945 taxes in the amount of $151.39, on Lot 20, Subdivision of NW¼ of Sec. 22, Twp. 51 South, Range 42 East.

4. Tax Receipt No. 8174 for 1945 taxes in the amount of $1.59 on Lot 17, Block 12, Town of Hallandale.

[fol. 185] The statement sent to us shows also that the total to be paid by Elsinore Beach Corporation and Halland Land Company is $974.94. Since our client has paid taxes on your client's property, and the statement also shows that the proration of taxes, as of August 9, 1945, was insufficient to the extent of $757.16, your client should send us a check for the amount of $974.94. We would appreciate receiving same at your earliest convenience. As you will notice, the discount was saved during the month of November by the prompt payment of the taxes by our client. These taxes were paid on your behalf by Hasam Realty Corporation, and we would like for your check to be made payable to it.

You may also accept this letter as an extension of the time of closing of the transaction described in Deposit Receipt dated June 9, 1945, so that the time for closing is extended to January 15, 1946. This is the transaction in which Elsinore Beach Corporation is seller, and Samuel Friedland is buyer. We are sending a copy of this letter to the National Title Company, 1661 Lenox Avenue, Miami Beach 39, Florida. As you have been previously advised, the contract in this transaction was assigned by Samuel Friedland to Beverly Beach Properties, Inc.

Very truly yours, Louis Heiman, for the Firm.

LH/bh.
Encs.

cc.—National Title Co., 1661 Lenox Avenue, Miami Beach, Florida.

cc.—Samuel Friedland, c/o Florida Wholesale Grocery Company, 82 N. E. 26th Street, Miami, Florida.

[fol. 186]

Nelson's Exhibit 39—Proof of California Law

STATE OF CALIFORNIA
Office of the
Secretary of State

I, Frank M. Jordan, Secretary of State of the State of California, hereby certify:

That a full, true and correct copy of Sections 1460, 1570 and 1571 of the Probate Code of the State of California, Sections 38, 39 and 40 of the Civil Code of said State and Section 1913 of the Code of Civil Procedure of said State is set forth in the transcripts first and second annexed hereunto, and

That the said sections, as they appear in the annexed transcripts, are in full force and effect and have been in full force and effect throughout the years 1945, 1946 and 1947 and in 1948 to the date of this certificate.

I further certify that I am the legal keeper of the original laws and statutes of the State of California and the proper officer to certify to copies and/or provisions thereof.

In witness whereof, I hereunto set my hand and affix the Great Seal of the State of California this 28th day of December, 1948.

Frank M. Jordan, Secretary of State. (Seal.)

[fol. 187] Probate Code of the State of California, Div. 4, Ch. 4:

> § 1460. *Power of court to appoint: Definitions.* Any superior court to which application is made as hereinafter provided may appoint a guardian for the person and estate or person or estate of an insane or an incompetent person. As used in this division of this code, the phrase "incompetent person," "incompetent," or "mentally incompetent," shall be construed to mean or refer to any person, whether insane or not, who by reason of old age, disease, weakness of mind, or other cause, is unable, unassisted, properly to manage and take care of himself or his property, and by

reason thereof is likely to be deceived or imposed upon by artful or designing persons. [Enacted 1931.]

Probate Code of the State of California, Div. 4, Ch. 10:

§ 1570. *Jurisdiction to appoint guardian of nonresident ward: Extent of guardianship.* The superior court may appoint a guardian of the person and estate, or person or estate, of a minor or insane or incompetent person who resides out of the state and who is within the county, or who has estate within the county, and who has no guardian within the state, upon petition of any friend of such person or of anyone interested in his estate, in expectancy or otherwise. Before making such appointment, the court or judge must cause notice to be given to all persons interested, in such manner as deemed reasonable. The guardianship which is first granted of a nonresident ward extends to all the estate of the ward within this state, and the court of no other county has jurisdiction. [Enacted 1931.]

§ 1571. *Powers and duties: Bond.* Every guardian of a nonresident ward has the same powers and duties, with respect to the estate of the ward within this state, and with respect to the person of the ward while living therein, as are prescribed by this code with respect to any other guardian. Such guardian must give bond to the ward as hereinbefore provided for other guardians, but his responsibility with regard to inventory, accounting and disposal of the estate is confined to such estate as comes into his hands in this state. [Enacted 1931.]

Civil code of the State of California, Div. 1, Part 1:

§ 38. [*Contracts of persons without understanding: Liability for necessaries.*] A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family. [Enacted 1872; Amended by Code Amdts. 1873-74, p. 183.]

[fol. 187a] § 39. [*Contracts by persons of unsound mind: Rescission.*] A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission, as provided in the chapter on rescission of this code. [Enacted 1872; Amended by Code Amdts. 1873-74, p. 184.]

§ 40 . [*Powers of persons whose incapacity has been adjudged: Discharge certificate: Presumption.*] After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power or waive any right, until his restoration to capacity. But a certificate from the medical superintendent or resident physician of the insane asylum to which such person may have been committed, showing that such person had been discharged therefrom, cured and restored to reason, shall establish the presumption of legal capacity in such person from the time of such discharge. [Enacted 1872; Amended by Code Amdts. 1877-78, p. 75.]

Code of Civil Procedure, State of California, Part 4, Title 2, Chapter 3, Article 2:

> § 1913. *Record of another state, its effect.* The effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced here by an action or special proceeding, and except, also, that the authority of a guardian or committee, or of an executor or administrator, does not extend beyond the jurisdiction of the government under which he was invested with his authority. [Enacted 1872.]

[fol. 188] [Stamp:] Filed August 26, 1947. Edmund L. Smith, Clerk. By Edw. F. Drew, Deputy Clerk

Beverly's Exhibit 4—Record of California Federal Court Case, Which Resulted in the Decision of Nelson v. Dora Miller, 201 Fed. 2.277.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

Civil No. 7545-B

COMPLAINT

SAMUEL NELSON, individually and as an heir, devisee and legatee of Olof Zetterlund, Deceased, suing on his own behalf and on behalf of all other heirs, devisees and legatees of Olof Zetterlund, Deceased, similarly situated; and as sole domiciliary executor of the Estate of Olof Zetterlund, Deceased; and as trustee of an express trust, Plaintiff,

vs.

DORA MILLER and HAROLD M. DAVIDSON, both individually and as pretending co-executors, or co-executors de son tort, of the Estate of Olof Zetterlund, Deceased, Defendants

The plaintiff, Samuel Nelson, in the following capacities: (a) individually; (b) as an heir, devisee and legatee of Olof Zetterlund, Deceased, suing on his own behalf and on behalf of all other heirs, deviseees and legatees of Olof Zetterlund, Deceased, similarly situated; (c) as sole domiciliary executor of the Estate of Olof Zetterlund, Deceased; (d) and as trustee of an express trust, a copy of which is hereto at- [fol. 189] tached, made a part hereof and marked Exhibit 1, by and through his attorneys, O'Connor & O'Connor, 530 West Sixth Street, Los Angeles, California, brings this action against Dora Miller and Harold M. Davidson, in the following capacities: (a) individually; (b) as pretending co-executors of the Estate of Olof Zetterlund, Deceased; (c) and as co-executors de son tort of the Estate of Olof Zetterlund, Deceased.

Plaintiff is an adult, resident and citizen of Essex County, State of New Jersey. Each of the defendants is an adult and resident of Los Angeles County, State of California. Neither of the defendants is in the military or naval service of the United States. The matter in controversy is of a civil nature and exceeds, exclusive of interest and costs, the sum of $3,000.00.

First Claim

Foreign Judgment

1

Plaintiff incorporates herein the foregoing introductory paragraph.

2

Olof Zetterlund died testate in Los Angeles County, California, on August 21, 1945. At the time of his death, Olof Zetterlund was a resident and citizen of and domiciled in Dade County, Florida. The residence, citizenship and domicil of Olof Zetterlund at the time of his death has been adjudicated by the County Judge's Court in and for Dade County, Florida, a constitutional court having exclusive jurisdiction over the administration of the Estate of decedent, in a proceeding to which each of the defendants [fol. 190] personally was a party. (See decisions of the Supreme Court of Florida, the Court of last resort in the State of Florida, listed and cited in Exhibit 2, hereto attached and made a part hereof.) On December 31, 1946, the County Judge's Court of Dade County, Florida, rendered a final judgment adjudicating that Olof Zetterlund was domiciled in the County of Dade, State of Florida, at the time of his death, and was not domiciled in the State of California at the time of his death. Said judgment remains in full force and effect, and was rendered by said Court in proceedings instituted therein by each of the defendants. An exemplified copy of said judgment and antecedent proceedings relating thereto is hereto attached and made a part hereof, marked Exhibit 3 (see pages 105 to 107 thereof).

3

As it is made to appear from the aforesaid exemplified copy of the record hereto attached and marked Exhibit 3, each of the defendants on October 2, 1945, (pages 68 to 71) submitted their persons and appeared generally in the domiciliary administration proceedings of the Estate of Olof Zetterlund, Deceased, then pending in the County Judge's Court in and for Dade County, Florida, and that at all times subsequent to said October 2, 1945, each of the defendants was personally amenable and subject to the jurisdiction of said Court.

4

On February 26, 1947, the aforesaid County Judge's Court in and for Dade County, Florida, in the aforesaid proceedings (In re Estate of Olof Zetterlund, Deceased, Probate No. 16,650) in which each of the defendants had appeared personally and submitted themselves to the jurisdiction of the Court, rendered a final judgment against each of the defendants, a copy of which appears in the exemplified [fol. 191] record (pages 138 to 141) of Exhibit 3 hereto attached. Said final judgment was rendered after due notice to each of the defendants upon plaintiff's petition (see pages 126 to 134 of Exhibit 3). Upon the rendition of said final judgment, the same was made effective upon service of a copy of the same upon each of the defendants, all of which is more fully shown by said Exhibit 3, pages 142, 143. Said final judgment, rendered on February 26, 1947, remains in full force and effect, and has not been vacated, reversed or modified. The said final judgment remains wholly unpaid and unsatisfied, and neither of the defendants has complied with or performed the terms and conditions of said final judgment.

5

The property of Olof Zetterlund, Deceased, which each of the defendants, by said final judgment rendered February 26, 1947, was directed to pay and deliver to the plaintiff, and was constituted intangible personal property and tangible personal property, the situs of which was never in California, but was in the State of Florida. By and in said final judgment rendered February 26, 1947, it was further adjudicated that each of the defendants had "illegally and wrongfully withdrawn" from several designated New York banks certain funds belonging to the Estate of Olof Zetterlund, Deceased, which should have been delivered to the plaintiff, as domiciliary executor of the Estate of Olof Zetterlund, Deceased.

6

The aforesaid judgment of February 26, 1947, is one to which this Court and the Courts of California must give full faith and credit under the provisions of Section 1, Article IV, of the Constitution of the United States.

[fol. 192] Prayer As To First Claim

Wherefore, plaintiff prays:

(a) That the aforesaid judgment of February 26, 1947, be given full faith and credit, to which it is entitled under the aforesaid provisions of the Constitution of the United States.

(b) That the aforesaid judgment of February 26, 1947, be made a judgment of this Court.

(c) That each of the defendants in their various capacities be required to perform and satisfy each of the provisions of the said judgment dated February 26, 1947, and that the goods, chattels, lands, tenements and estate of each of the defendants be subjected to the satisfaction of said judgment.

(d) That each of the defendants be adjudged in contempt of Court for their refusal and failure to comply with the terms and provisions of said judgment dated February 26, 1947.

Second Claim

Resulting Trust, Together with Alternative Relief Therefor

1

Plaintiff incorporates herein the foregoing introductory paragraph immediately preceding the First Claim.

2

Olof Zetterlund was born in Sweden on December 17, 1858, and emigrated to the United States when about twenty-one years of age. He became a citizen of the State of Florida sometime during the latter part of the nineteenth century and acquired large tracts of ocean front land situated in that state, the greater portion of which he owned at the time of his death. Olof Zetterlund died testate on [fol. 193] August 21, 1945. Olof Zetterlund died without issue and left no surviving spouse. At the time of his death Olof Zetterlund was a resident and citizen of the State of Florida.

3

During the year 1927 Olof Zetterlund employed the defendant, Dora Miller, as his housekeeper, which employment relationship continued thereafter until his death. Dora Miller was over thirty years younger than Olof Zetterlund, and throughout the last years of the life of Olof Zetterlund, she completely dominated and controlled his activities.

4

During the fall of 1941, while Olof Zetterlund was a citizen and resident of the state of Florida, and when Olof Zetterlund was infirm, ill, senile, aged, and physically and mentally incapacitated, the defendant, Dora Miller, persuaded him to go to the State of California with her for a short visit on account of his health. Olof Zetterlund and the defendant, Dora Miller, arrived in the State of California in the fall of 1941. After the arrival of Olof Zetterlund and Dora Miller, as aforesaid, in California, the condition of Olof Zetterlund became progressively worse. Olof Zetterlund soon lost his power of locomotion, his power of speech and his ability to write and read. In 1942 Dora Miller, through artifice practiced on Olof Zetterlund, or otherwise, gained complete and exclusive possession and control of the funds and bank accounts of Olof Zetterlund, with full power of withdrawal of the same. At the time Olof Zetterlund thus went to California, he was seized and possessed with large bank accounts in several banks in the City of New York, State of New York, the City of Miami, State of Florida, in Sweden, and elsewhere. Said accounts [fol. 194] aggregated approximately $100,000.00, all of which funds were dissipated by Dora Miller during the period beginning with the arrival of Olof Zetterlund in California in the fall of 1941.

5

During the latter part of 1943, the defendant, Dora Miller, with the cooperation, assistance and advice of the defendant, Harold M. Davidson, undertook to acquire real and personal property in the name of Dora Miller with funds belonging to Olof Zeterlund, and in the execution of said plan, the defendant, Dora Miller, caused to be procured, delivered and recorded a grant deed, a copy of which is hereto attached, made a part hereof and marked Exhibit 4. Said deed conveyed to the defendant, Dora Miller, an unmarried woman, the following described property situated in Los Angeles County, State of California, to-wit:

> The Southerly 50 feet of the Northerly 64 feet of Lot 4, Tract 9202, as per map recorded in Book 153, pages 13 and 14 of Maps in the office of the Recorder of said County.

Said property also is known as 525 North Del Mar Avenue, San Gabriel, California. Said deed bears date November 17, 1943, and was recorded on December 2, 1943, in the public records of Los Angeles County, California, in Book No. 20487 of Official Records, at page 157. At the time of the execution of said deed and at all times thereafter, a dwelling house was situated on the property conveyed by said deed, which dwelling house was occupied and used by Olof Zetterlund and Dora Miller continuously until the death of Olof Zetterlund, and thereafter by Dora Miller. At the time of the execution and delivery of said deed, the said dwelling house was unfurnished. Upon the execution and delivery of said deed, Dora Miller, with funds belonging to Olof Zetterlund, elaborately furnished said dwelling [fol. 195] house, which furniture and furnishings are still situated in said dwelling house.

6

In the purchase of said property, both real and personal, the title to which was taken in the name of the defendant, Dora Miller, the following funds of Olof Zetterlund were used, to-wit:

> (a) The defendant, Dora Miller, withdrew the sum of $5801.76 of the funds of Olof Zetterlund with the

Emigrant Industrial Savings Bank of New York, New York. Said withdrawal was by check bearing date November 13, 1943, and deposited by Dora Miller to her own individual account on November 18, 1943 with the Security-First National Bank of Los Angeles, California, and withdrawn from said bank on the written order of Dora Miller.

(b) The defendant, Dora Miller, withdrew the sum of $5,000.00 of the funds of Olof Zetterlund with the Greenwich Savings Bank of New York, New York. Said withdrawal was by check bearing date on or about November 15, 1943, and deposited by Dora Miller to her own individual account on November 23, 1943, with the Security-First National Bank of Los Angeles, California, and withdrawn from said bank on the written order of Dora Miller.

(c) The defendant, Dora Miller, withdrew the sum of $5297.10 of the funds of Olof Zetterlund with the Seaman's Bank for Savings of New York, New York. Said withdrawal was by check bearing date December 20, 1943, and deposited by Dora Miller in a bank, the identity of which is unknown to plaintiff, and withdrawn [fol. 196] on the order of Dora Miller.

(d) The defendant, Dora Miller, withdrew the sum of $4,908.36 of the funds of Olof Zetterlund with the First Federal Savings & Loan Association of Miami, Florida. Said withdrawal was by check bearing date December 27, 1943, and deposited by Dora Miller to her own individual account on February 11, 1944, with The Security-First National Bank of Los Angeles, California, and withdrawn from said bank on the written order of Dora Miller.

(e) Certain funds of Olof Zetterlund, out of his account with the First National Bank of Miami, Florida, the exact amount being to the plaintiff unknown, were also withdrawn by the defendant, Dora Miller.

7

Upon the execution and delivery of the aforesaid deed, and while the property thereby conveyed was being used by Dora Miller and Olof Zetterlund as a dwelling house, all expenses and the care, management, maintenance and repair of said property was paid by the use of funds of Olof Zetterlund, withdrawn on the written order of Dora Miller, defendant.

8

The aforesaid real and personal property constitutes in equity the property of Olof Zetterlund, now deceased, and therefore, is a part of the estate of Olof Zetterlund, Deceased. The defendant, Dora Miller, has no real, or equitable, or beneficial interest in and to said real property, and holds the legal title thereto in trust for the estate of Olof Zetterlund. The defendant, Dora Miller, wongfully, illegally and fraudulently claims title and ownership to said [fol. 197] property and is now undertaking to sell and dispose of the same and appropriate the proceeds thereof.

9

Plaintiff does not know the exact cost of the said real and personal property, but alleges that the defendant, Dora Miller, appropriated and used all of the aforesaid funds of Olof Zetterlund (comprising the aforesaid four specific items aggregating $21,007.22, and other funds(in the purchase of the aforesaid real and personal property and its maintenance, repair, payment of taxes, insurance and utilities.

Prayer as to Second Claim

Wherefore, plaintiff prays:

(a) That a resulting trust be declared in the above described real and personal property in favor of the estate of Olof Zetterlund, Deceased, and that the defendant, Dora Miller, be decreed to hold the legal title thereto in trust for the plaintiff, and be required to convey said property to the plaintiff, and to account for the reasonable rental and use value of the said property by her during the entire period beginning with the execution and delivery of said deed and continuously thereafter, or,

(b) In the alternative, as provided by Rule 18, an accounting may be had, and the actual amound of funds of Olof Zetterlund used by the defendant, Dora Miller, in the acquisition of the above described real and personal property and in the maintenance, operation, repair, utilities, including taxes and insurance and other kindred expenses, be ascertained and determined, and, if the said amount be greater than the value of said property, that the defendant, Dora Miller, be required to repay to the plaintiff said amount of money, together with interest thereon, and that [fol. 198] said indebtedness be decreed to be a lien on the above described property, as well as other assets of the said Dora Miller.

(c) That the defendants be required to pay to the plaintiff all costs, expenses and attorneys' fees incurred or paid by the plaintiff in recapturing the property described in the Second Claim so as to indemnify and save harmless the plaintiff by reason of the wrongful acts of the defendants.

Third Claim

Accounting

1

Plaintiff incorporates herein the foregoing introductory paragraph immediately preceding the First Claim.

2

Plaintiff incorporates herein Paragraph 2 of the Second Claim.

3

Plaintiff incorporates herein Paragraph 3 of the Second Claim.

4

Plaintiff incorporates herein Paragraph 4 of the Second Claim.

5

During the eighteen years while the aforesaid employment contract between Olof Zetterlund and Dora Miller was in effect, a fiduciary relationship existed between said persons. During said time Dora Miller pursued a plan of diverting to her own use large sums of money belonging to Olof Zetterlund. During the last four years of the limetime of Olof Zetterlund, while he was physically and mentally [fol. 199] incapacitated, Dora Miller exercised exclusive and complete dominion and control over the affairs of Olof Zetterlund and during said period Dora Miller appropriated unto herself a large portion of the estate and funds of Olof Zetterlund and dissipated a large portion of the funds and estate of Olof Zetterlund, the exact amount of which is to the plaintiff unknown. Dora Miller, with the cooperation, assistance and advice of Harold M. Davidson, her attorney, has secreted large portions of the funds and estate of Olof Zetterlund and refuses to deliver and pay the same over to the plaintiff.

Prayer as to Third Claim

Wherefore, plaintiff prays:

(a) That a general and specific accounting be had by each of the defendants of all their acts and doings on behalf of Olof Zetterlund during the lifetime of Olof Zetterlund and since the death of Olof Zetterlund, and that the use of funds and estate of Olof Zetterlund by said defendants be traced. That a money judgment be entered against each of the defendants in an amount equal to the funds and estate of Olof Zetterlund wrongfully appropriated by said defendants and each of them; and that all of the assets and property of each of the defendants acquired by the use of funds or property belonging to Olof Zetterlund be impressed with an equitable lien or trust in favor of the plaintiff, for the use and benefit of the Estate of Olof Zetterlund; and that the defendants, and each of them, be required to pay all costs, expenses and attorneys' fees incurred or paid by the plaintiff in the enforcement and prosecution of this his Third Claim.

[fol. 200]

Fourth Claim

Enforcement of Federal Right

1

Plaintiff incorporates herein the foregoing introductory paragraph immediately preceding the First Claim. Jurisdiction is founded on the existence of a Federal question, and the action also arises under the Constitution of the United States, Article IV, Section 1, and an act of Congress of the United States, 28 U.S.C.A. 687.

2

Plaintiff incorporates herein Paragraph 2 of the First Claim.

3

Plaintiff incorporates herein Paragraph 3 of the First Claim.

4

As it is made to appear from the aforesaid exemplified copy of the record hereto attached and marked Exhibit 3, the County Judge's Court of Dade County, Florida, a constitutional court with exclusive jurisdiction over the administration of the affairs of a decedent, assumed original domiciliary jurisdiction over the Estate of Olof Zetterlund, deceased, on August 30, 1945. On the succeeding day, August 31, 1945, the defendants, Dora Miller and Harold M. Davidson, sought to invoke the jurisdiction of the Superior Court of Los Angeles County, California, in a domiciliary administration proceedings of the estate of Olof Zetterlund, Deceased, and sought to procure their appointment as co-executors of the Estate of Olof Zetterlund, Deceased, and in an ex parte proceedings the said California Court appointed the defendants as co-executors of the [fol. 201] Estate of Olof Zetterlund, Deceased. Said proceedings thus instituted and prosecuted by the defendants in the Superior Court of Los Angeles County, California, was grounded upon the premise that Olof Zetterlund at the time of his death was domiciled in the State of California, which premise, as herein alleged, was false and without foundation. Thereafter, the defendants and the State of California and its Controller submitted for adjudication to the County Judge's Court in and for Dade County, Florida, as is shown by the exemplified record thereof attached hereto and made a part hereof as Exhibit 3, three issues as follows:

(a) The domicil of Olof Zetterlund at the time of his death,

(b) The validity of a purported codicil (see pages 71 to 73, of Exhibit 3),

(c) The right of the defendants to serve as co-executors of the Estate of Olof Zetterlund, Deceased. Said issues thus presented by the defendants to the County Judge's Court of Dade County, Florida, were regularly made up by appropriate adversary pleadings presented by the parties thereto and duly tried before the said Court. The parties to this cause were parties to said cause. The defendants, together with the State of California and its Controller, not only submitted themselves to the jurisdiction of the said County Judge's Court in and for Dade County, Florida, in said cause, and presented said issues for adjudication, but prosecuted the same to completion, and the said Court adjudicated the same adversely to the defendants and the State of California and its Controller, which adjudication was embraced in the judgment and decree rendered on December 31, 1946 (pages 105 to 107, Exhibit 3), and the judgment and decree of January 17, 1947 [fol. 202] (pages 108 and 112 of Exhibit 3). Thereafter the defendants and the State of California and its Controller prosecuted an appeal (pages 122 to 125 of Exhibit 3), resulting in a decision of affirmance (pages 144 to 151 of Exhibit 3). Thus it is that the aforesaid judgments and decrees, as shown in Exhibit 3 hereto attached, are binding on the defendants and the State of California and its Controller, and said adjudication has effectively concluded the following issues:

(a) Olof Zetterlund at the time of his death was domiciled in the State of Florida and not the State of California.

(b) The aforesaid purported codicil bearing date August 3, 1945, is null and void.

(c) The defendants are not co-executors of the Estate of Olof Zetterlund, Deceased.

(d) The aforesaid proceedings instituted and prosecuted by the defendants in the Superior Court of Los Angeles County, California, are null and void for want of jurisdiction.

5

Notwithstanding the aforesaid judgments reflected in Exhibit 3 hereto attached, defendants still claim and pretend to claim and hold themselves out to the world as co-executors of the Estate of Olof Zetterlund, Deceased, and are attempting to exercise and are exercising the powers of said office, and are unlawfully, wrongfully and fraudulently interfering and intermeddling with the administration of the Estate of Olof Zetterlund by Samuel Nelson, as sole domiciliary executor thereof. The defendants while thus pretending to be co-executors of the Estate of Olof Zetterlund, when in truth and in fact they are not, and while attempting to act as co-executors be son tort, have [fol. 203] appropriated unto themselves a large amount of the funds belonging to the Estate of Olof Zetterlund, Deceased, which amount exceeds the sum of $3,000.00, exclusive of interest and costs, the exact amount of which is unknown to plaintiff.

Prayer as to Fourth Claim

Wherefore, plaintiff prays:

(a) That the defendants be enjoined from exercising any functions as co-executors of the Estate of Olof Zetterlund, Deceased.

(b) That an accounting be had and taken as to all actions of the defendants as pretending co-executors of the Estate of Olof Zetterlund, Deceased, or as co-executors de son tort of the Estate of Olof Zetterlund, Deceased.

(c) That the aforesaid proceedings initiated and prosecuted by the defendants in the Superior Court of Los Angeles County California, be determined to be null and void for want of jurisdiction.

(d) That the defendants be compelled to recognize and give effect to the judgments of the County Judge's Court in and for Dade County, Florida, shown in the exemplified record, Exhibit 3.

O'Connor & O'Connor, 530 West Sixth Street, Los Angeles 14, California. By William V. O'Connor, Attorneys for Plaintiff.

[fol. 204] Know All Men by These Presents

Whereas, Olof Zetterlund died testate on August 21, 1945, and Samuel Nelson, ever since January 20, 1945, has been and is the duly appointed, qualified and acting domiciliary Executor of the Estate of Olof Zetterlund, Deceased (see In Re: Estate of Olof Zetterlund, Deceased, Probate No. 16,650, in the County Judge's Court in and for Dade County, Florida), and

Whereas, on February 26, 1947, a judgment was rendered by the County Judge's Court of Dade County, Florida, against Dora Miller and Harold M. Davidson in favor of the Estate of Olof Zetterlund, Deceased, which judgment is recorded in Probate Orders, Book 142, page 86, of said Court, and remains in full force and effect, and

Whereas, Dora Miller and Harold M. Davidson have wrongfully appropriated unto themselves large amounts of money and property, both intangible and tangible, belonging to Olof Zetterlund, now deceased, and are fraudulently secreting the same in the State of California.

Now, therefore, I, Samuel Nelson, as domiciliary Executor of the Estate of Olof Zetterlund, Deceased, do hereby appoint and constitute Samuel Nelson, individually, as Trustee, to institute, maintain and prosecute such actions against Dora Miller and Harold M. Davidson as he may deem advisable, in the United States District Court in the State of California, to collect, receive, recapture and recover all funds, moneys, property of whatsoever kind belonging to the Estate of Olof Zetterlund, Deceased, or in which Olof Zetterlund was interested at the time of his death, now standing in the name of Dora Miller and Harold M. Davidson, or either of them, directly or indirectly, or in their possession, custody or control, and upon its receipt to account for the same to the domiciliary Executor of the Estate of Olof Zetterlund, Deceased.

In Witness Whereof, I hereunto set my hand and seal in the City of Fort Lauderdale, Broward County, Florida, this the 10th day of June, 1947.

(S.) Samuel Nelson, Domiciliary Executor of the Estate of Olof Zetterlund, Deceased. (Seal.)

Signed, sealed and delivered in the presence of (S.) C. A. Hiaasen, Helen Woodruff.

[fol. 205] **District Court of the United States for the Southern District of California, Central Division**

Civil Action File No. 7545-B

Samuel Nelson, individually; and as an heir, devisee and legatee of Olof Zetterlund, Deceased, suing on his own behalf and on behalf of all other heirs, devisees and legatees of Olof Zetterlund, Deceased, similarly situated; and as sole domiciliary executor of the Estate of Olof Zetterlund, Deceased; and as trustee of an express trust, Plaintiff,

v.

Dora Miller and **Harold M. Davidson**, both individually and as pretending co-executors, or co-executors de son tort, of the Estate of Olof Zetterlund, Deceased, Defendants

Summons

To the above named Defendants:

You are hereby summoned and required to serve upon O'Connor & O'Connor plaintiff's attorneys, whose address is 530 West Sixth Street, Los Angeles 14, California, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Edmund L. Smith, Clerk of Court. By Charles A. Seitz, Deputy Clerk. (Seal of Court.)

Date: August 26, 1947.

[fol. 205a] So. District of Calif.:

I hereby certify and return, that on the 26th day of September, 1947 I received the within Summons and that after diligent search, I am unable to find the within-named defendants Dora Miller within my district.

Robert E. Clark, U. S. Marshal, by Charles W. Ross, Deputy United States Marshal.

[fol. 205b] [Stamp:] Filed September 30, 1947. Edmund L. Smith, Clerk. By Edw. F. Drew, Deputy Clerk

Return on Service of Writ

UNITED STATES OF AMERICA,
So. District of Calif.:

I hereby certify and return that I served the annexed Summons on the therein-named Harold M. Davidson, by handing to and leaving a true and correct copy thereof with him at Alhambra in said District on the 11th day of September, 1947.

Robert E. Clark, U. S. Marshal, by C. W. Ross, Deputy.

[fol. 206] [Stamp:] Filed Oct. 1, 1947. Edmund L. Smith, Clerk. By Edw. F. Drew, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Civil No. 7545-B

SAMUEL NELSON, individually, and as an heir, devisee and legatee of Olof Zetterlund, deceased, suing on his own behalf and on behalf of all other heirs, devisees and legatees of Olof Zetterlund, deceased, similarly situated, and as sole domiciliary executor of the Olof Zetterlund, deceased; and as trustee of an express trust, Plaintiff,

vs.

DORA MILLER and HAROLD M. DAVIDSON, both individually and as pretending co-executors, or co-executors de son tort, of the estate of Olof Zetterlund, deceased, Defendants

ANSWER

Of Dora Miller and Harold M. Davidson, Individually, and as Co-executors of the Last Will and Testament and Codicil of Olof Zetterlund, Deceased

Comes now defendants, Dora Miller and Harold M. Davidson, as individuals and as co-executors of the Last

Will and Testament and Codicil of Olof Zetterlund, deceased, and admit, deny and allege as follows:

I

Admit that Olof Zetterlund died testate in the County of Los Angeles, State of California, on August 21, 1945, and deny that at the time of his death Olof Zetterlund was a [fol. 207] resident and citizen of, or domiciled in Dade County, Florida, but allege the fact to be that Olof Zetterlund was, at the time of his death, and for a long time prior thereto, a resident of the County of Los Angeles, State of California, and that he was a citizen and domiciled in the County of Los Angeles, State of California, and that the residence, citizenship and domicile was adjudicated by the Superior Court of the State of California, in and for the County of Los Angeles, at the time of the death of Olof Zetterlund to be the County of Los Angeles, State of California, and deny that the County Judge's Court in and for the County of Dade, State of Florida, was a constitutional court having exclusive jurisdiction, or any jurisdiction at all, over the administration of the estate of said decedent, and that said court has never adjudicated, or determined the force and effect of a Codicil to the Last Will and Testa*t*ment of Olof Zetterlund, but that the force and effect of the Codicil to the Last Will and Testament of Olof Zetterlund was adjudicated and determined by the Superior Court of the State of California, in and for the County of Los Angeles.

Admit that the County Judge's Court of Dade County, Florida, rendered a judgment adjudicating that Olof Zetterlund was domiciled in the County of Dade, State of Florida, at the time of his death, but that said decision has not become final and is now on appeal, and that said judgment does not remain in full force or effect, and that the said court does not now have, or did have original jurisdiction in said matter.

II

Deny that at all times subsequent to October 2, 1945 each of the defendants was personally amenable, or subject to the jurisdiction of the County Judge's Court in and for Dade County, State of Florida, but allege that they did appear for the purpose of submitting the Codicil to the Last Will [fol. 208] and Testament of Olof Zetterlund, for probate and for ancillary proceedings based on the California Court's adjudication, objecting to the probate of the Last Will and Testament, as an original proceeding in Florida, and for those purposes only, and that the said Court refused to admit the Codicil to the Last Will and Testament of Olof Zetterlund to probate, although the Court of proper jurisdiction, to wit: The Superior Court of the State of California, in and for the County of Los Angeles, had admitted said Codicil to probate and adjudicated, prior to the hearing in said court in Florida, that said Codicil was properly executed and was the last will and testament of Olof Zetterlund; that there is a conflict existing between said court in California and said court in Florida.

That these defendants deny that the judgment of the Florida Court is a final judgment.

III

Deny that the judgment of the Florida Court referred to in Paragraphs 4, 5 and 6 of plaintiff's first claim is one to which this Court, or the Courts of California, must give full faith or credit under the provisions of Section 1, Article IV, of the Constitution of the United States, and allege that all intangible and tangible personal property of Olof Zetterlund, deceased, is subject to the jurisdiction of the State of California Superior Court, in and for the County of Los Angeles, and that the County Judge's Court in and for Dade County, Florida, has no jurisdiction whatsoever over any tangible or intangible personal property of said Olof Zetterlund, deceased. Denies generally and specifically each and every other allegation of paragraphs 4, 5, and 6.

Wherefore, defendants pray that the judgment of February 26, 1947, be adjudicated by this Court to be of no force and effect and unenforcible, and that it be denied a judgment of this Court, and that the Court adjudicate and adjudge that the Superior Court of the State of California, in and for the County of Los Angeles has the sole juris-[fol. 209] diction of tangible and intangible personal property of Olof Zetterlund, deceased, and that the defendants be given judgment with costs, and for such other and further relief as may be proper.

And in answer to Plaintiff's Second Claim, defendants admit, deny and allege as follows:

I

Deny that at the time of his death, Olof Zetterlund was a resident, or citizen of the State of Florida, but allege that said Olof Zetterlund was at the time of his death, and for a long time prior thereto, a resident and citizen of the State of California, and was domiciled and a resident of the County of Los Angeles, California.

II

Deny that Dora Miller completely, or at all, dominated or controlled the activities of Olof Zetterlund; deny that during the fall of 1941, or at any other time, or at all, or when Olof Zetterlund was infirm, or ill, or senile, or aged, or physically or mentally incapacitated, defendant Dora Miller persuaded Olof Zetterlund to go to the State of California for a short visit on account of his health, but allege the fact to be that in the fall of 1941 Olof Zetterlund was of sound mind and memory and that he decided to go to California of his own will and volition for his health and that he decided Florida was not a healthful state, but that California was a healthful state and that the climatic conditions in California were very superior to that of Florida for the health of Olof Zetterlund.

Admit that Olof Zetterlund and defendant Dora Miller arrived in California in the fall of 1941, but deny that the condition of Olof Zetterlund became progressively worse, but allege that his condition became generally better; and [fol. 210] deny that he lost his power of locomotion, or his power of speech, or his ability to write or read, and deny that in 1942, or at any other time, Dora Miller, through artifice, or any other means, or otherwise, gained complete, or exclusive possession, or control of the funds, or bank accounts of Olof Zetterlund, but allege that she was employed by Olof Zetterlund as his secretary and assistant and did assist him in all of his business dealings.

Deny generally and specifically each and every allegation contained in Paragraph 4 of plaintiff's second claim and deny that there were any sums in excess of $10,000.00 in any of the banks set forth therein, or states, and deny that any of the funds at all were dissipated by Dora Miller, but allege that any funds that were withdrawn, or used, were withdrawn and used for the benefit and use of Olof Zetterlund, and for no one else, and were withdrawn at his specific instance and request and demand, and that no funds were withdrawn by Dora Miller except upon the request of Olof Zetterlund.

III

Deny that during the latter part of 1943 Dora Miller, with the cooperation, or assistance, or advice of defendant, Harold M. Davidson, or any one else, or at all, undertook to acquire real or personal property in the name of Dora Miller, or with funds belonging to Olof Zetterlund, or the execution of any plan at all which Dora Miller caused to be procured, or delivered, or recorded a grant deed set forth in plaintiff's second claim, and marked Exhibit 4 of plaintiff's complaint, but allege the fact to be that Olof Zetterlund, for and in consideration of services rendered to Olof Zetterlund by Dora Miller, purchased and paid for said real property and that the money did come from Olof Zetterlund and was voluntarily and without coercion at all, given to Dora Miller for the purpose of permitting Olof Zetterlund to have a home during the remainder of his life and with the express understanding that it was her sole property and that Olof Zetterlund had no interest therein [fol. 211] except the right to use it during his life time.

Deny that Dora Miller elaborately furnished said dwelling, but allege that the furniture is common and ordinary furniture and furnishings and were furnished to Dora Miller by Olof Zetterlund at his own request.

IV

Deny generally and specifically each and every allegation contained in Paragraph 6 of plaintiff's second claim and in this connection allege that any funds that were withdrawn from any bank at all were drawn at the request of Olof Zetterlund and at his special instance and request and for his use and benefit and not for the use or benefit of Dora Miller, except for the payment to her of wages.

V

Deny generally and specifically each and every allegation contained in Paragraphs 7 and 8 of plaintiff's second claim and deny that Dora Miller wrongfully or illegally or fraudulently claims title, or ownership, to said property, or is now undertaking to sell, or dispose of the same, or appropriate the funds and proceeds thereof, and deny that the property was purchased for any sum in excess of $13,000.00, and Dora Miller alleges that said property is her sole property and that the plaintiffs, or the estate of Olof Zetterlund, have no interest in said real or personal property. That the real property and the personal property were each chosen personally by Olof Zetterlund and that, at his direction, the title was placed in the name of Dora Miller in consideration of her tender care and services to him, and for the purpose of providing her with security and for a place in which he might make his home during the remainder of his life time.

Wherefore, defendants pray that judgment be given to these defendants in said second claim and that plaintiff take nothing by his second claim at all, and that the Court [fol. 212] adjudge and decree that plaintiff has no right, title or interest whatsoever in and to the real property described in said second claim, and for such other and further relief as may be proper.

And in Answer to Plaintiff's Third Claim, defendants admit, deny and allege as follows:

I

Answering Paragraph 2, deny that at the time of his death, Olof Zetterlund was a resident or citizen of the state of Florida, but allege that at that time, he was a resident of, and domiciled in the state of California.

II

Answering Paragraph 3, deny that throughout the last years of the life of Olof Zetterlund defendant Dora Miller completely dominated or controlled his activities, but allege that at all times, Dora Miller explicitly followed the directions given her by Olof Zetterlund.

III

Deny generally and specifically each and every allegation contained in Paragraph 4 of plaintiff's second claim as incorporated in plaintiff's third claim and deny that accounts aggregating $100,000.00, or any other sums at all, were dissipated by Dora Miller at any time, place, or in any manner whatsoever.

IV

Deny generally and specifically each and every allegation contained in Paragraph 5 of plaintiff's said third claim, and deny that any funds at all were at any time diverted to her own use or that she had any dominion or control over the affairs of Olof Zetterlund, but acted only under his direction, and in this connection, defendants allege that Harold M. Davidson did not know Olof Zetterlund, or Dora Miller, until he was called upon in the early part of 1944.

[fol. 213] Wherefore, defendants pray that plaintiff take nothing by his third claim and that they be given judgment with costs.

And in answer to the fourth claim in plaintiff's complaint, defendants admit, deny and allege as follows:

I

Answering Paragraph 2, deny that at the time of his death Olof Zetterlund was a resident or citizen of, or domiciled in Dade County, Florida, but allege the fact to be that he was a resident of, and domiciled in the County of Los Angeles, State of California, and that his estate is subject to the jurisdiction of the State of California and not of the State of Florida.

II

Answering Paragraph 3, deny generally and specifically each and every allegation contained in Paragraph 3 of plaintiff's first claim which was incorporated by reference in said fourth claim.

III

Deny generally and specifically each and every allegation contained in Paragraph 4 of plaintiff's fourth claim and specifically deny that the County Judge's Court in and for Dade County, Florida, had exclusive jurisdiction or any jurisdiction whatsoever over the estate of Olof Zetterlund, and allege that the said County Judge's Court refused to pass upon the purported Codicil, or recognize it at all and that said Court was prejudiced against the California Court and that said judgment set forth in Paragraph 4 of plaintiff's fourth claim in said complaint has not become final, and further allege that the Superior Court of the State of California, in and for the County of Los Angeles, has the sole and exclusive jurisdiction over all of the tangible and intangible property of Olof Zetterlund, deceased, and allege that all of the acts performed by these defendants were done with the express authority of the Superior Court of the State of California, in and for the County of Los Angeles, [fol. 214] and that plaintiff has no right, or jurisdiction, to interfere with the orders of the said Superior Court of the State of California, and that the plaintiff is endeavoring to interfere with the orders of said Court of the State of California.

IV

Answering Paragraph 5, admit that the defendants claim and hold themselves out to be co-executors of the Estate of Olof Zetterlund, deceased, and admit that they are exercising the powers of said office as conferred and granted to them by the Superior Court of the State of California, in and for the County of Los Angeles. Deny generally and specifically each and every allegation in said paragraph not herein specifically admitted. Deny that they have unlawfully, wrongfully or fraudulently appropriated to themselves a large amount of the funds belonging to the Estate of Olof Zetterlund in the sum of $3,000.00 exclusive of interest and costs, or any other sum or at all, and allege that any sum taken into the hands of the defendants was as co-executors of the estate of Olof Zetterlund, by and with the authority given them by the Superior Court of the State of California, in and for the County of Los Angeles.

Wherefore, defendants pray that plaintiff take nothing by his fourth cause of action and claim, and that the Court adjudicate and adjudge that he has no right or cause to interfere with the defendants in the operation and management of the estate of Olof Zetterlund, deceased, in the State of California, and concerning any tangible or intangible property of said decedent, and that it further adjudge that the plaintiff has only the right to exercise jurisdiction over real property that may exist in the State of Florida; for costs of suit; and for such further order as may be just and proper in the premises.

(S.) William J. Clark, attorney for defendants.

[fol. 215] State of California,
County of Los Angeles, ss.:

Dora Miller and Harold M. Davidson, being by me first duly sworn, depose and say: That they are defendants in the foregoing and above entitled action; that they have read the foregoing Answer and know the contents thereof; and that the same is true of their own knowledge, except as to the matters which are therein stated upon their information or belief, and as to those matters that they believe it to be true.

(S.) Dora Miller, (S.) Harold M. Davidson.

Subscribed and sworn to before me this 30 day of September, 1947, Inez Deems, Notary Public in and for said County and State. My commission expires Feb. 1, 1949.

State of California,
County of Los Angeles, ss.:

Inez Deems, being first duly sworn, deposes and says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above entitled action; that affiant's business address is 317 West Main Street, Alhambra, California; that on the — day of September, 1947, affiant served the within Answer on the plaintiff in said action, by placing a true copy thereof in an envelope addressed to the attorneys of record for said plaintiff at the office address as follows:

O'Connor & O'Connor,
Attorneys at Law,
530 West Sixth Street,
Los Angeles 14, California

and by then sealing said envelope and depositing the same, [fol. 216] with postage thereon fully prepaid, in the United

States Post Office at Alhambra, California, where is located the office of the attorney for the persons by and for whom said service was made.

That there is delivery service by the United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

Inez Deems.

Subscribed and sworn to before me this — day of September, 1947, —— ——, Notary Public in and for said County of Los Angeles, State of California.

[fol. 217] United States District Court, Southern District of California, Central Division

Atty Clark:

Re: 7545-B Nelson v. Millet et al.

Please be advised that the above-entitled cause was continued for setting for trial to Jan. 17, 1949, 10 AM on the calendar of Judge Beaumont.

Dated: Los Angeles, Calif., Jan. 3, 1949.

Edmund L. Smith, Clerk, by —— ——, Deputy.

[fol. 218] United States District Court, Southern District of California

Certificate

I, Edmund L. Smith, Clerk of the United States District Court, Southern District of California, do hereby certify that the preceding and annexed is a true and correct copy of the Complaint, and Exhibit 1, Filed August 26, 1947; Summons, Issued August 26, 1947, with Return of Service, Filed September 30, 1947; Answer of Dora Miller and Harold M. Davidson, Individually and as Co-Executors of the Last Will and Testament and Codicil of Olof Zetterlund, Deceased, Filed October 1, 1947; Notice from Clerk of Above Entitled Court, of Continuation of Setting for Trial to January 17, 1949, 10 A. M., issued January 3, 1949, in the Matter Entitled Samuel Nelson, etc. vs. Dora Miller and Harold M. Davidson, etc., Docket No. 7545-B, Central Division, in the above-entitled cause, as shown by the records of my office.

Witness my hand and the seal of the said Court this 18th day of January, A.D. 1949. Edmund L. Smith, Clerk of the United States District Court, Southern District of California. (Seal.)

I hereby certify that the foregoing certificate of the Clerk of the United States District Court, Southern District of California, is in due form and that the signature attached thereto is the true signature of the Clerk of said Court.

Paul J. McCormick, United States District Judge.

I, Edmund L. Smith, Clerk of the United States District Court, Southern District of California, do hereby certify that the Honorable Paul J. McCormick is upon the date hereof a United States District Judge and that the signature to the above certificate is the true signature of the said Paul J. McCormick.

Witness my hand and the seal of said Court at Los Angeles, California, this 18th day of January, A.D. 1949. Edmund L. Smith, Clerk of the United States District Court, Southern District of California. (Seal.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 742.

GUSTAF RENSTA, d.b.n.c.t.n. of the Estate of Olof Zetterlund, Deceased, substituted in the place of Samuel Nelson, as Executor, now Deceased; *et al.*,

Petitioners,

vs.

BEVERLY BEACH PROPERTIES, INC., a Florida corporation; JAMES Q. BURDET; *et al.*,

Respondents.

BRIEF IN OPPOSITION TO CERTIORARI.

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The respondent, Beverly Beach Properties, Inc., a Florida corporation, opposes the granting of the petition for writ of certiorari filed by the petitioners in the above cause on the following grounds:

I.

No substantial Federal question whatsoever is presented.

II.

The sole question for determination is whether deeds to real property in the State of Florida executed and delivered by two Florida corporations as grantors to a Florida corporation as grantee, should be rescinded because of equitable reasons consistent with the decisions of the Supreme Court of Florida. That Court held that the deeds were validly executed and delivered, and that there were no sufficient equitable grounds shown to justify a court of equity to rescind the transaction. Did this raise a substantial Federal question which could have been or would now be decisive of the case just because it is contended that the internal affairs of the grantor corporations were not correctly handled, and that a California guardian for one of the stockholders then living and residing in California, was permitted by the California court to vote the stock in the Florida corporations?

III.

The Supreme Court of Florida in dealing with the three corporate entities, all Florida corporations, had the sole jurisdiction to determine whether the deeds or acts of the two grantor corporations were sufficient to have passed title to the property in question to the grantee corporation, also a Florida corporation, as long as there was a substantial compliance with the Florida law and a substantial consideration, there being no Federal question where the Supreme Court of Florida refuses to permit a court of equity to rescind an executed real estate transaction upon equitable grounds.

IV.

The question of the power of a California guardian for an incompetent person to vote the stock in a Florida corporation under the specific orders and directions of the California court, is only collaterally involved. But this Court has from its various opinions never considered that there is a Federal question raised where a state court has given full faith and credit to the decrees and proceedings of a sister state, either under the full faith and credit clause of the constitution or under the doctrine of comity. The failure to give full faith and credit might or might not raise a substantial Federal question depending upon whether that question would be decisive of the decision in the state court. There is no such point involved in this case.

Respondent's Statement of the Essential Elements of the Case.

The gist of the complaint will show that there is no question involved of any California guardian selling any property of her ward in the State of Florida.

The transcript of the record in its printed form does not show the two deeds granting title from Elsinore Beach Corporation and Halland Land Company as grantors to Beverly Beach Properties, Inc., as grantee, or the purchase money mortgage from Beverly Beach Properties, Inc., given as a part of the consideration. These original instruments were sent by separate order from the Supreme Court of Florida, and the original instruments will be found in Exhibits 1 to 30 in their original form.

These deeds, however, are referred to in the amended complaint, and since this is the beginning and the gist of the entire case, we refer the Court to Printed Transcript Page 88, in which it is charged:

"(E) On August 13, 1945, Elsinore Beach Corporation executed and delivered to Beverly Beach Properties, Inc., a warranty deed, a photostatic copy of which was attached as Exhibit 14 to the original bill of complaint. Although said deed bears the date August 4, 1945, and appears to have been acknowledged August 8, 1945, the same was not in fact delivered until the day of its recordation August 13, 1945 * * *. At the same time as the making and delivery of said deed, the Halland Land Company executed and delivered to Beverly Beach Properties, Inc., its deed conveying 24 lots listed in Exhibit 11. A photostatic copy of said deed is attached to the original bill of complaint as Exhibit 17. * * * On August 13, 1945, Beverly Beach Properties, Inc., caused to be recorded in the office of the Clerk of the Circuit Court of Broward County, Florida, three instruments, consecutively and simultaneously, to-wit:

Registry No. 270,008 (Exhibit 14), Deed (Deed Book 496, page 197);

Registry No. 270,009 (Exhibit 17), Deed (Deed Book 496, page 202);

Registry No. 270,010 (Exhibit 32), Satisfaction (Satisfaction Book 103, page 473) of the Elsinore Beach Corporation mortgage to Paul D. McGarry for $180,000, included in Exhibit 9.

"Sometime between August 13, 1945, and August 27, 1945, Beverly Beach Properties, Inc., executed and delivered to Elsinore Beach Corporation its mortgage deed. A photostatic copy of said mortgage deed was attached as Exhibit 15 to the original bill of complaint. Said mortgage deed was recorded August 27, 1945, in Mortgage Book 183, page 477, of the public records of Broward County, Florida."

The deeds from the two Florida corporations, towit, Elsinore Beach Corporation and Halland Land Company, covered land which was owned by those two corporations.

Those were the only two deeds executed and given to Beverly Beach Properties, Inc. There is no issue in this case nor was there any issue in the lower court concerning the title to any property other than that which had been vested in the two grantor corporations.

Petitioners have attempted to confuse the issue by stating that the California guardian sought to convey property belonging to Olof Zetterlund while Zetterlund was in California under guardianship proceedings and under the protection of the Superior Court of Los Angeles County, California, and contended that that guardian in California had no right to convey property in the nature of real estate in the name of Olof Zetterlund personally in Florida without the appointment of an ancillary guardian in the State of Florida.

There is no issue about that point. There has been no deed from the guardian in California to Beverly Beach Properties, Inc., covering some 99 lots owned by Olof Zetterlund individually and no claim to title to those 99 lots has been made by Beverly Beach Properties, Inc. That question was not raised in the answers of Beverly Beach Properties, Inc. This court will note (Printed Transcript 150) that the execution and delivery of the deeds from the two corporations to Beverly Beach Properties, Inc., was admitted; that the corporate existence of all the corporations as Florida corporations was admitted, but it simply corrects one statement in the complaint and that was the fact that the purchase money mortgage given back to the grantors was executed and delivered on August 9, 1945, at the time of the execution and delivery of the two deeds by the two corporations to Beverly Beach Properties, Inc. It was pointed out that the fact that the mortgage was not recorded by the mortgagee until August 27, 1945, or several weeks later, was no concern or fault of the purchaser.

The prayer of the bill was to have the court rescind the two corporation deeds given to Beverly Beach Properties, Inc., on August 9, 1945, and duly recorded within several days thereafter.

There are many other collateral features involved in the case between the executor of the Zetterlund Estate and the various stockholders of the Elsinore Beach Corporation and the Halland Land Company, some of their officers, directors and agents and their attorneys, with which Beverly Beach Properties, Inc., could not be and is in no way concerned.

The main ground for claim of rescission was that there was an inadequate consideration paid by Beverly Beach Properties, Inc., to the two grantor corporations which gave the court of equity under the Florida decisions a right to rescind the transaction. It is true that the lower court (the Circuit Court of Broward County, Florida) at one time held that the consideration paid (something over $700-000) and which was the best price offered at any time for the property up to August, 1945, was inadequate in view of the testimony given several years later by appraisers that the property was worth $900,000, or should have been worth that much at that time.

The Supreme Court of Florida in the opinion now complained of (Printed Transcript, Page 924) said with reference to this question of consideration:

> "It is a matter of common knowledge that when real property is placed upon the open market for a reasonable length of time, in the absence of fraud, the price which it brings is usually accepted as the fair current market value thereof.
>
> Under all the circumstances of this case and particularly in view of the fact that there was no fraud, either actual or constructive, at least upon the part of

Samuel Friedland, we cannot be persuaded to hold that the price paid for the property was so grossly inadequate as to shock the conscience of a court of equity sufficiently to justify rescission based only upon inadequacy of consideration."

With this decision of the Supreme Court clearly holding that there was no ground for equitable rescission as against Mr. Samuel Friedland and the corporation to which he assigned his rights, Beverly Beach Properties, Inc., then where would there be any federal question?

We think the Supreme Court of Florida in its opinion analyzed the situation very thoroughly, and we attach as Appendix A to this brief the full copy of that opinion.

The petitioners in their petition for certiorari failed to attach that opinion but did attach as Appendix B the opinion in the case of *Miller et al. v. Nelson et al.*, 160 Fla. 410, 35 So. 2d 288, which case involved a situation which arose after the execution and delivery of these deeds in question on August 9, 1945, but in which Samuel Friedland and Beverly Beach Properties, Inc., Elsinore Beach Corporation and Halland Land Company were not parties. We therefore feel that reference to the actual opinion now in question will be more convenient to the court if we attach that opinion as an appendix rather than have the court search through the large printed transcript where the opinion is shown beginning at Transcript, Page 913.

In the petition for certiorari, in the portion called "Statement of the Matter Involved," counsel have not made it very clear as to the simplicity of the issue actually before this court, but if we can sum up their contentions, we think it would be sufficient to say that they contend that there is a Federal question involved because the Florida Supreme Court, in dealing with an equitable rescission action between Florida corporations covering Florida property, refused to collaterally impeach the solemn decrees of the Superior Court of Los Angeles County, California, in a proceeding in which that court had not only appointed a guardian for Olof Zetterlund, but had actually approved of the guardian voting stock in a Florida corporation in such a way that this stockholder, together with other stockholders, would authorize the corporation to convey certain properties which the corporations held to Beverly Beach Properties, Inc.

Since the Florida Supreme Court held that there was no ground for equitable rescission and there was no showing that there was any defect in the execution and delivery of the deeds, then where did the Federal question arise?

We think that counsel for the petitioners have not clearly pointed out that after this title to property passed in August of 1945, Beverly Beach Properties, Inc., then proceeded to spend hundreds of thousands of dollars in the outward development of this raw vacant land, which consisted of dredging, building of bulk-heads, filling of lands and construction of buildings.

It was not until April 24, 1947, that any suit was filed to question the validity of those conveyances. That suit was filed actually by a stockholder in the nature of a class suit to allegedly rescind an executed transaction which had been closed practically two years prior thereto. In the meanwhile, there was no showing as to why the delay, and it was apparent to every one that all of the stockholders and the officers and directors of those two corporations were aware of the improvements and construction going on.

We mention this because the Supreme Court of Florida could have upheld the dismissal of this bill or this lawsuit upon the doctrine of laches alone, or it could have applied the doctrine of equitable estoppel, or any of the other equitable reasons for denying a rescission, none of which would involve any Federal question, because it has to be admitted that there were contracts, there were deeds and there was an adequate consideration passed. The sufficiency of that consideration or the determination of the question of estoppel *in pais,* laches, statute of limitations, failure to make an offer of restitution, failure to make any showing of ability to put the parties back *in status quo* and all of those matters solely are matters for determination by the state courts of Florida.

We wish to emphasize that even under the admitted statement of facts contained in the petition for certiorari, there were many reasons why the Supreme Court of Florida could have ordered the dismissal of the bill, without even touching upon the question of whether the California guardian had the right to vote stock in a Florida corporation. This was purely a collateral matter and we think the Supreme Court of Florida could have very properly said that they would not consider that point because there were other factors which would be controlling.

This brings us to the consideration of "Questions Presented" on page 17 of the petition for certiorari.

There are five questions presented, about which we will comment.

Petitioners' Question 1.

"Is it a denial of due process for a State court to recognize on the ground of comity as well as full faith and credit a judicial proceeding in another State which itself was invalid for lack of due process?"

In answer to this question propounded by the petitioners, we reiterate what we have just said hereinabove. The decision of the Florida Court in refusing to rescind an executed transaction after many years and after the condition of the parties had completely changed, would not raise a Federal question. A court of equity has the right to determine whether a stockholder of a corporation may be estopped by laches or undue delay or by other means, when questioning a transaction which has been approved by the Board of Directors and consummated with a third party.

We are not here concerned with what remedy a stockholder may have against its corporate officers who have disobeyed his instructions or done some act detrimental to the stockholder. The stockholder and the officers of the corporation are one and the same so far as innocent third parties are concerned, so we say that question is not pertinent and does not present any federal issue of real substance.

Petitioners' Question 2.

"Does a State have power under the Fourteenth Amendment to authorize a guardian of the property of a non-domiciliary incompetent to sell real estate located in another State by means of voting of the stock of a foreign corporation owning the real estate, where the stock certificates were located in said foreign State?"

The wording of this question virtually brings about its own answer, and that question was clearly disposed of by the Supreme Court of Florida decision which held that Zetterlund was physically in California and that the California courts were the only courts that had any jurisdiction over his body while he was there residing. They pointed out that the question of what would be his permanent domicile or what state would have the right to get his inheritance tax after he died, was not in question. Zetterlund was there, someone had to act for him, and California was the only state which had jurisdiction of his person and the only state which could have appointed a guardian. The pertinent portion of the Supreme Court of Florida opinion is as follows (Tr. 917-918):

> "Obviously, someone had to act as guardian for Zetterlund and since he was in California and had lived there approximately four years, California was the only state which had jurisdiction of the person as well as of the subject matter and the court of competent jurisdiction in that State was the only court which could have appointed a guardian for Zetterlund. No court in the ordinary administration of justice can exercise jurisdiction over a person unless he shall have voluntarily appeared or is within the jurisdiction of the court so that process may be served upon him.
>
> Undoubtedly, the Superior Court of California had the right to appoint a guardian for Olof Zetterlund and such guardian, once appointed under the laws of California, became entitled to exercise voting rights of shares of stock owned by the ward in domestic as well as foreign corporations. The California guardian, under the laws of that jurisdiction, to all intents and purposes had the title to the stock of her ward—Zetterlund. California adopted as early as 1877 the rule that a guardian has more than bare authority; he has 'authority coupled with an interest.' See *Lincoln* v. *Alexander*, 52 Cal. 482, 28 Am. R. 639.

Section 1517 of the California Probate Code reads:

> 'A guardian may give proxies to vote any shares of stock of a corporation, whether domestic or foreign, held in the estate, or to exercise any voting rights attaching to or arising from property held in the estate. He may waive notice of and consent to any meeting of shareholders or property owners or

> authorize by a writing any action which could be taken by shareholders.'
>
> Under the circumstances of this case, we are impelled to the view that the courts of Florida should give full faith and credit to the orders and judgments of the Superior Court of California which appointed the guardian of Olof Zetterlund and which authorized and approved the transaction consummated as a result of the guardian's proxy voting the ward's share of stock owned in the Florida corporations. The full faith and credit clause of the Federal Constitution requires that the courts of this State recognize the action of the California Court in the appointment of the guardian, in the construction of the legality of that appointment and the actions of the guardian as such, so long as the guardian was acting under the laws of the State of California and consistently with the provisions thereof."

That question presents an inconsistent statement because, in the first place, a stockholder, even though he holds a majority of the stock in a corporation, does not own the real estate owned by that corporation. His right is subject to the rights of creditors of the corporation and the right of the control by the directors, together with the rights of other stockholders. There is no attempt here to pierce the fiction of the corporate structures which were set up by Mr. Zetterlund and other parties for reasons having nothing to do with this sale. There is no requirement in the Florida law or any other corporation laws, so far as we know, which requires the consent of all the stockholders every time the corporation sells property or transacts business with a third party. The economic life of the nation would be stymied if this were the law.

Further, the actual location of the stock certificates themselves would have nothing to do with the question of a Federal law or Federal question being involved. The Supreme Court of Florida in its opinion (Transcript, Page 918) held that this stock was intangible personal property and that the rule *mobilia sequuntur personam* would be applicable in corporations chartered in the State of Florida, and the Supreme Court of Florida said in this respect, after quoting all of these decisions and upholding the right of the foreign guardian to vote the stock (Transcript, Page 919):

> "If this were not a case in which we are required by the Federal Constitution to give full faith and credit to the orders and judgments of the Superior Court of California, we would, nevertheless, be required to recognize the legislative enactments of California and the judicial acts of the Superior Court of that State as a matter of comity.
>
> * * * * * * *
>
> Upon the subject of the appointment of a guardian for an incompetent person neither the law nor the public policy of this State is inimical to the law and public policy of the State of California. Our statute, Section 746.01, F. S. A., which was in full force and effect at the time of the appointment of Dora Miller as guardian of Olof Zetterlund by the Superior Court of California, provided that a guardian might be appointed for an incompetent person whether such person was 'permanently or temporarily residing in this State.' There is no provision of our law which requires a foreign guardian to take out ancillary proceedings in this State in order *to vote shares of corporate stock*, nor is there any prohibition in the law of Florida against a guardian appointed in this State voting shares of stock owned by the ward in corporations chartered under the laws of a sister state or states."

This would therefore seem to dispose of the fact that Question 2 does not present any substantial Federal question which this Court should be called upon to decide.

Petitioners' Question 3.

"Is it a denial of due process to recognize a foreign judicial proceeding which is subject to collateral attack in the foreign State on the grounds that the notice required by the foreign statute was not given and the foreign court exceeded its statutory jurisdiction?"

The Florida Court had no right to pierce the proceedings in the California Court or to question the findings of fact of the California Court which had found that Zetterlund was a resident of California, was within the Court's jurisdiction, that he was incompetent, that due and proper notice had been served in accordance with the California law, and that a guardian should be appointed. Whether or not notice had been served upon every one required was a matter of fact which was found in the affirmative by the California Court.

The record here does not disclose any direct attempt by anyone to set aside that finding of the California Court. The body of Zetterlund having been there, the guardian having been properly appointed according to the decrees of the California Court, and the California guardian having properly voted the stock under Court order, there was nothing for the Florida Court to do but accept that verdict.

This Court cannot say as a matter of original jurisdiction that someone could go into the California Courts and attack the validity of the appointment of Dora Miller. These petitioners and their predecessors could have done so, but did not. Instead of that, they saw fit to go into the Federal Court in California to recover assets which Dora

Miller had taken over from Mr. Zetterlund as guardian and which she later held, after his death, as his executrix. Both the District Court for the Southern District of California, Central Division, as well as the United States Court of Appeals for the Ninth Circuit, refused their prayer. *Nelson* v. *Miller*, reported on December 9, 1952, in 201 F. 2d 277. No appeal was taken. Mr. Nelson, the predecessor of Gustaf Rensta, and the plaintiff in the suit in the California District Court, and Mr. C. A. Hiaasen, the attorney in the Florida litigation and one of the attorneys on the petition for certiorari here, and the attorney in that case, were not successful in impeaching any portion of the California proceedings. How, then, can it be presumed that the Florida Supreme Court should have reached out and collaterally attacked the California proceedings?

The Florida Supreme Court particularly mentioned that decision and quoted from it at great length. That decision was binding, not simply as a matter of general law, but was binding upon these petitioners and their predecessors. If they felt aggrieved by the opinion of the Court of Appeals for the Ninth Circuit, they could have petitioned to this Court for a review by certiorari.

Now this Court is asked to review an opinion of the Supreme Court of Florida which not only gives full faith and credit to the decrees of the California Superior Court (State Court), but which has felt that it was bound by the decision of the said Court of Appeals for the Ninth Circuit, stating (Transcript, Page 923):

> "If we adhere to this doctrine as established by the said Federal decision, then we are required to give full faith and credit to the proceedings in the Superior Court of California, Los Angeles County, which took place during the period of the guardianship administra-

tion. We cannot see how there could be any conflict as to jurisdiction between the States of California and Florida during the period of the guardianship proceedings because we hold to the rule that intangible personal property in contemplation of law, accompanies the person of the owner. See *State ex rel. United States Sugar Corporation* v. *Gay,* (Fla.) 46 So. 2d 165; *State ex rel. Seaboard Air Line Railroad* v. *Gay,* 160 Fla. 445, 35 So. 2d 403."

Petitioners' Question 4.

"If a State has power to authorize a guardian to exercise the powers set forth in question '2' above, may it do so consistently with procedural due process by virtue of a proceeding where no notice was given other than to the incompetent himself, and where there was no proceeding in the foreign State"?

In answer to this question, we reiterate what has been said before, and we point out further that no State Court has the right to collaterally impeach the decrees of a sister State because of some alleged failure to follow procedural matters in that court.

Petitioners' Question 5.

"Is it a denial of due process for a State court to dismiss a complaint on the ground that the issues are determined by a foreign judicial proceeding without remanding for a further hearing where the foreign proceeding lacks due process unless an incompetent was domiciled in the foreign State, and where the issue of domicile was not litigated in the foreign State, because the proceeding there was *ex parte,* and not litigated in the forum because the respondents' pleading admitted that the issue was controlled by a prior judgment of the highest court of the forum to the effect that the incompetent was all times domiciled in the forum"?

This question is confusing and does not clearly present any issue. The attorney drafting the question has presumed that the Supreme Court of Florida based its sole opinion in denying rescission of the two corporate deeds upon the actions of the California Court. They overlook the fact that the Supreme Court of Florida took into consideration many equitable factors and refused to set aside deeds which had been actually executed and delivered for an adequate consideration as of August 9, 1945. The action of the Supreme Court of Florida and the Courts of Florida therefore is negative, rather than positive, when it refuses the petitioners the equitable processes of Florida to set aside an executed real estate transaction. The Supreme Court of Florida has simply left the parties in the position which they, through their corporate acts, placed themselves. The inability of the parties to be placed back *in status quo* after years of delay would have been sufficient to justify a court of equity refusing to intervene and refusing to set aside those executed, delivered and recorded deeds.

The fifth question would pre-suppose erroneously that there is some vague question about Zetterlund's domicile that controls the whole pattern of this case. The Supreme Court of Florida, as we have pointed out, simply held that the permanent domicile of Zetterlund was not involved in the question of whether California had the right to appoint a guardian while Zetterlund was a resident of California. We assume that most guardianship proceedings are *ex parte* in nature. That is a matter of concern for the court appointing the guardian and not for some court of a foreign State to determine.

Therefore, we say that under those questions, the petitioners' specifications of error wholly fail to show any federal question involved because, after a rather confusing analysis and preliminary statements, petitioners now claim that their sole specifications of error upon which this writ of certiorari should be granted, are as follows:

> "The Court below erred:
>
> 1. in holding that the California court had power to approve a contract for the sale of real property which included real property owned in Florida by Olof Zetterlund individually.
> 2. in holding that the California guardian, acting through her proxy in Florida, did nothing in Florida except vote stock;
> 3. in holding that the California order was dispositive of the cause where the contract of sale which was conditioned on the approval of the California court was never approved of by that court; and
> 4. in refusing to hold that the California guardian committed a fraud on the California court."

As to Specification 1, we respectfully contend that we have demonstrated that there is no question of any sale of property belonging to Olof Zetterlund individually, and there is only involved in this cause in the Supreme Court opinion transactions for the sale of corporate properties from two Florida corporations to a Florida corporation.

As to Specification 2, we respectfully say we have demonstrated that the actions now involved in the Florida Supreme Court opinion cover only the act of the guardian in voting the stock in these two Florida corporations.

As to Specification 3, we respectfully show that we have demonstrated that we are not involved in a sale by a California guardian of real estate of the ward in Florida. A foreign guardian had the right to vote stock in the two Florida corporations. There is no basis to the claim that a Federal question is involved.

Specification 4 is clearly no grounds for a certiorari because the Florida Supreme Court could never determine that a California guardian committed a fraud on the California Court.

Each and all of these four matters in our opinion have been thoroughly disposed of by the Supreme Court of Florida opinion as well as by the Court of Appeals for the Ninth Circuit in the case of *Nelson* v. *Miller*, 201 F. 2d 277, as above mentioned.

Petitioners' Reasons for Granting Writ.

We have carefully analyzed the cases set forth in that portion of the petition beginning on page 19 and have no quarrel with the authorities which are cited, with the exception that we do not see where they apply in any respect to this case.

Apparently petitioners base their whole theory upon some vague doctrine which they have drawn from the case of *May* v. *Anderson*, decided May 18, 1953, 345 U. S. 528, 723 Sup. Ct. Rep. 840.

From the facts in that case, it appears that a father filed a suit for divorce in Wisconsin. This was an *ex parte* action and the Wisconsin Court had no personal jurisdiction over the mother. That Wisconsin Court gave custody of the minor children to their father. The minor children were with the mother in Ohio at the time the father obtained the *ex parte* decree and the father, after the *ex parte* decree in Wisconsin had been entered, filed a proceeding on July 5, 1951, for a writ of habeas corpus in the Probate Court of Columbian County, Ohio, claiming that his former wife, Leona Anderson May, was illegally restraining the liberty of their minor children.

The Probate Court held that it was controlled by the Wisconsin decree, under the due process clause, and ordered that the children be turned over to the father. An appeal was taken and that order was held in abeyance. That order was upheld by the Supreme Court of Ohio and the Court of Appeals of Ohio, and proceedings were taken to the Supreme Court of the United States in the nature of a petition for writ of certiorari.

The Court pointed out that before the decree in Wisconsin was entered, the appellant, the wife, took the children to Ohio; that a few days after that he filed suit in Wisconsin and only got substituted service by delivering to her personally in Ohio a copy of the summons. Based upon this decree, accompanied by a local police officer, the husband went to Lisbon, Ohio, and took possession of the children and apparently the children remained with the father until July, 1951. He then brought them back to Ohio and permitted them to visit the mother, and when he demanded the return, she refused to surrender them.

This Court held that since there was no actual domicile of the wife in Wisconsin at the time the divorce suit was filed, there was no personal jurisdiction. The Supreme Court was not called upon to say what would have been the rule had the wife actually been in Wisconsin and actually been personally served in Wisconsin at that time. In the concurring opinion by Mr. Justice Frankfurter, they made these following comments (73 Sup. Ct. Rep. 844):

> "What is decided—the only thing the Court decides—is that the Full Faith and Credit Clause does not require Ohio, in disposing of the custody of chil-

> dren in Ohio, to accept, in the circumstances before us, the disposition made by Wisconsin. The Ohio Supreme Court felt itself so bound. This Court does not decide that Ohio would be precluded from recognizing, as a matter of local law, the disposition made by the Wisconsin court. For Ohio to give respect to the Wisconsin decree would not offend the Due Process Clause. Ohio is no more precluded from doing so than a court of Ontario or Manitoba would be, were the mother to bring the children into one of these provinces."

In the above quotation, this Court said:

> "For Ohio to give respect to the Wisconsin decree would not offend the due process clause."

In the case at bar, we say by analogy that, for Florida to give respect to the California decree would not offend the due process clause.

We again commend this case to this Court's attention on the point involved herein.

We therefore respectfully say that there is no substantial Federal question shown, and for the reasons above set forth, the petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A.

BEVERLY BEACH PROPERTIES,

Inc. et al. v. NELSON et al.
68 So. 2d 604

Supreme Court of Florida,
Special Division A.
Feb. 27, 1953.

On Rehearing July 31, 1953.

Rehearing Denied Dec. 3, 1953.

Action for declaratory judgment. The Circuit Court, Palm Beach County, C. E. Chillingworth, J., entered decree adjudicating equities of the parties, and plaintiffs appealed, and defendants cross-appealed. The Supreme Court, Hobson, J., held that where California guardian of person and estate of ward designated proxy to vote ward's stock in two Florida corporations, and after lengthy negotiations at which proxy was present, proxy voted to sell corporations' interest in certain properties for $700,000, and California court which had appointed guardian approved the transaction, Florida court was required to give full faith and credit to the orders and judgments of the California court.

Reversed in part, and remanded.
Terrell, J., dissented.

1. Appeal and Error Key 1097(1)

Where suit which had formerly been before Supreme Court came before Supreme Court again, on appeal after remand, Supreme Court had power to correct any error which chancellor or Supreme Court might previously have made in progress of suit, since suit was same and not new and different suit, and there was no question of res judicata.

2. Appeal and Error Key 1097(2)

Supreme Court may change the law of the case at any time while it has jurisdiction and will not hesitate to do so if convinced that original pronouncement of law was erroneous.

3. Courts Key 11

In ordinary administration of justice, no court can exercise jurisdiction over a person unless he shall have voluntarily appeared or is within jurisdiction of court so that process may be served on him.

4. Courts Key 510

Where citizen of Florida had resided in California for about four years before he was adjudged a mental incompetent, court of competent jurisdiction in California was only court which could appoint a guardian of incompetents, person and estate.

5. Judgment Key 826

Where California guardian of person and estate of ward designated a proxy to vote ward's stock in two Florida corporations, and after lengthy negotiations, at which proxy was present, proxy voted to sell the corporations' interests in certain properties for $700,000, and California court of competent jurisdiction which had appointed the guardian approved the transaction, Florida court was required to give full faith and credit to the orders and judgments of the California court. Probate Code Cal. § 1517; U.S.C.A.Const. art. 4, § 1.

6. Courts Key 511

Where California guardian of person and estate of ward designated a proxy to vote ward's stock in two Florida corporations, and after lengthy negotiations, at which proxy was present, proxy voted to sell corporations' interest in certain properties for $700,000, and California court which had appointed guardian approved the transaction, even if Florida court were not required to give full faith and credit to orders and judgments of California court, Florida court would be required to recognize the legislative enactments of California and judicial acts of its courts as matter of comity. Probate Code Cal. § 1517; F.S.A. § 746.01; U.S.C.A.Const. art. 4, § 1.

7. Courts Key 511

Rules of comity may not be departed from except for purpose of protecting citizens of state of forum or of enforcing some paramount rules of public policy.

8. Vendor and Purchaser Key 44

In action for declaratory judgment that sale of certain property owned by corporations in which mental incompetent owned stock was consummated through fraud of buyer, evidence was insufficient to establish fraud.

9. Property Key 6

Intangible personal property accompanies person of owner.

10. Evidence Key 18

It is matter of common knowledge that when realty is placed upon open market for reasonable length of time, in absence of fraud, the price which it brings is usually accepted as the fair current market value thereof.

11. Vendor and Purchaser Key 44

In action for declaratory judgment that sale of certain properties owned by corporations in which mental incompetent owned stock was consummated through actual or constructive fraud on part of buyer, evidence was insufficient to establish that $700,000 which was paid by buyer for certain wild, unimproved, low-lying and unfilled acreage was so grossly inadequate as to shock conscience of court of equity sufficiently to justify rescission based upon inadequacy of consideration.

Ward & Ward and Myers, Heiman & Kaplan, Miami, for appellants Beverly Beach Properties, Inc., and Samuel Friedland.

Hall, Hedrick & Dekle, Miami, for appellant Glynn O. Rasco.

Evans, Mershon, Sawyer, Johnston & Simmons and Herbert S. Sawyer, Miami, for appellant E. L. Lockhart.

Carl A. Hiaasen, McCune, Hiaasen & Kelley, Fort Lauderdale, for appellees.

PER CURIAM.

This is the second time we have been called on to consider this case. Nelson v. Beverly Beach Properties, Inc., Fla., 47 So. 2d 310, wherein it was found that we had rarely been confronted with a case that ran into such involved and tedious complexities. We were convinced that the rights of all the parties should be settled in the litigation and reversed for that purpose. The mandate went down, testimony was taken and the chancellor entered a decree adjudicating the equities of the parties. We are now confronted with appeals and cross-appeals from the chancelor's decree.

Numerous questions are urged for reversal. In his opinion the chancellor found that on account of the lapse of time, complexities, and the cross-currents generated by the parties and their counsel in attempting to realize on their claims, the rem had become so involved that it would be impossible to place them all in status quo. We so indicated in the former opinion. The pleadings and the evidence on which the chancellor's decree was predicated have been examined and we cannot say that error is clearly shown. We have searched diligently and are not advised in what respect the quality of justice could have been improved.

If another opinion would serve any useful purpose, we could do no better than to adopt the opinion and findings of the chancellor. They are detailed definite and specific. He knew the parties and the subject matter and was in much better position to pronounce justice than we are. The law of the case was pronounced in the former opinion and appears to have been followed scrupulously.

The judgment is accordingly affirmed.

Affirmed.

HOBSON, C. J. and TERRELL, THOMAS and MATHEWS, JJ., concur.

On Rehearing Granted

HOBSON, Justice.

This case made its first appearance before this Court, 47 So.2d 310, 317, on an appeal from an order of the presiding Chancellor which order was in effect a "split" decree in that it was final in some respects and interlocutory in others.

We wrote and released an opinion but, upon petition for rehearing, we modified the original opinion, our exact language being:

> "We have rarely if ever been confronted with a case that ran into such involved and tedious complexities. We are convinced that the rights of all the parties should be settled in this litigation and reversed the judgment primarily for that purpose. *Nothing said in our opinion was intended to prejudice the rights of any litigant,* or to impede the chancellor in arriving at a proper decision." (Italics supplied.)

After the going down of our mandate the lower court, in obedience thereto, directed E. L. Lockhart, one of the claimants, to interplead and bring into the case the matters and things upon which he was relying for relief. When the cause was thus reopened extensive testimony was introduced by and on behalf of Lockhart. This additional testimony might have persuaded the Chancellor, but obviously it did not do so, to the conclusion that the price paid by appellants for the wild, unimproved low-lying, unfilled acreage involved herein at the time of the sale (June, 1945) and under conditions then existing was the highest and best price obtainable, was fair and not grossly inadequate. Such testimony did apparently assist in convincing the Chancellor that Mr. Samuel Friedland was not guilty of actual fraud in the transaction wherein he purchased the real property which is the subject matter of this litigation.

As we understand it, the Chancellor was of the opinion and so decided that Mr. Friedland was guilty of constructive fraud (of which Beverly Beach Properties, Inc., cannot say it did not have notice because that corporation is Friedland's alter ego) in that he rushed through a "quick deal", which he knew was a good one for him, without "making any reasonable inquiry or investigation of the records of the corporation" which, had he done, he "could have been advised of the illegality of the meeting of the stockholders and directors because of the lack of any valid authorization to bind the interest of Olof Zetterlund as a stockholder and hence should be charged with knowledge of the fact that the newly elected purported officers of the corporation in fact had no valid authority to execute a deed for it."

In our recent opinion to which this petition for rehearing is addressed we said: "The law of the case was pronounced in the former opinion [47 So.2d 310] and appears to have been followed scrupulously."

In their petition for rehearing counsel for appellants take the position that in the first appearance of this case in this Court we did nothing more than reverse the cause for further proceedings with directions that the rights of all the parties be settled in this one suit. It is their position that the modification of our original opinion on the former appeal wherein we said: "Nothing said in our opinion was intended to prejudice the rights of any litigant" considered in the light of our reversal, should be construed as a holding that we had not settled any questions of law presented in and by the original appeal and that in our recent opinion we failed to consider such fact when we said: "The law of the case was pronounced in the former opinion * * *."

Furthermore, counsel insist that if we held in our former opinion that a foreign guardian could not vote shares of stock of a corporation belonging to his ward as distinguished from selling real property situated in Florida which is owned by his ward, we departed from established law, failed to give full faith and credit to the judgment of the California court as required by Section 1, Article IV, of the Federal Constitution and should, on this petition for rehearing, hold that the California guardian had the right to vote the shares of stock which belonged to her ward, Olof Zetterlund, in stockholders' and directors' meetings of Elsinore Beach Corporation and Halland Land Company.

Counsel for appellees insist (1) that we decide in our opinion in 47 So.2d 310 that the Chancellor was correct in holding the guardian for Olof Zetterlund appointed by the California court had no authority to vote the shares of stock owned by her ward in the two Florida corporations, to-wit: Elsinore Beach Corporation and the Halland Land Company; (2) that such pronouncement became the law of the case and cannot now be overturned and (3) that in any event the Chancellor was correct in his original and final holding that the California guardian was not authorized to vote the shares of stock owned by her ward, Olof Zetterlund, in the two aforementioned Florida corporations and that the action of the corporations in selling the land to Samuel Friedland was void.

The position taken by counsel for appellants that we did no more in our opinion, and modification thereof, on the original appeal, than reverse the judgment and did not decide as a matter of law that the California guardian could not vote the stock owned by Olof Zetterlund in Elsinore Beach Corporation and the Halland Land Company is not devoid of merit. However, it is unnecessary to follow their argument since we are now of the opinion that the Chancellor erred in deciding as a matter of law that the California guardian had no authority to vote by proxy the shares of stock belonging to her ward and that we almost perpetuated such error.

[1, 2] This is the same suit and we have not lost jurisdiction thereof. Consequently, we have the power to correct any error which the Chancellor or we may have heretofore made in the progress of this litigation. There is no question of res adjudicata because this is the same, not a new and different, suit. However this Court, among others, has gone so far as to hold that it will not invoke the doctrine of res adjudicata if to do so would work injustice. The propriety of such ruling can not be questioned when one reflects upon the fact that the primary purpose for which our courts were created is to administer justice. In the case of Wallace v. Luxmoore, 156 Fla. 725, 24 So.2d 302, 304, we said:

> "Stare decisis and res adjudicata are perfectly sound doctrines, approved by this court, but they are governed by well-settled principles and when factual situations arise that to apply them would defeat justice we will apply a different rule. Social and economic complexes must compel the extension of legal formulas and the approval of new precedents when shown to be necessary to administer justice. In a democracy the administration of justice is the primary concern of the State and when this cannot be done effectively by adhering to old precedents they should be modified or discarded. Blind adherence to them gets us nowhere."

A Court should have less hesitancy in changing "the law of the case" before losing jurisdiction than it would have in refusing to apply the doctrine of res adjudicata when all the requisites thereof are present. We may change "the law of the case" at any time before we lose jurisdiction of a cause and will never hesitate to do so if we become convinced, as we are in this instance, that our original pronouncement of the law was erroneous and such ruling resulted in manifest injustice. In such a situation a court of justice should never adopt a pertinacious attitude.

As heretofore observed, we have concluded that both the Chancellor and this Court (if indeed we did so decide) were in error in determining that the California guardian was not authorized to vote the shares of stock owned by Olof Zetterlund in Elsinore Beach Corporation and the Halland Land Company. We do, and should, recognize the fact that it was the Chancellor's duty to follow the law of the case as he interpreted it upon a consideration of our opinion in 47 So.2d 310, and certainly he should be commended rather than criticized for following the law of this case as he considered it had been laid down by this Court.

From 1930 until 1940 Olof Zetterlund had resided primarily in Florida. In 1940 he went to California. At that time Mr. Zetterlund, although aged, was apparently in good health. He purchased a home in California and placed the title of such real property in his then nurse and companion, Dora Miller. Thereafter he conducted all of his business by mail and telegraph, communicating by such methods with his representatives and attorneys in Broward and Dade Counties, Florida. In the early part of May, 1945, while Olof Zetterlund was still residing in California, the Superior Court of Los Angeles County, California, acting upon petitions filed in said court, determined that Olof Zetterlund was incompetent and appointed Dora Miller guardian for his person and estate. At that time Olof Zetterlund was in the jurisdiction of that court and had been for several years.

A full report was made to the California court concerning negotiations in Florida for the sale by two Florida corporations of the real property which is the subject of this litigation and which was owned by such corporations. Dora Miller, the guardian, designated Harold M. Davidson, a practicing attorney in the State of California, as her proxy to vote Zetterlund's stock in the aforementioned Florida corporations.

Davidson came to Florida and, under the authority of the California court and of the proxy given him by Dora Miller, voted the shares of stock owned by Zetterlund. Prior to the contract of purchase and sale entered into between Elsinore Beach Corporation and Halland Land Company on the one hand and Samuel Friedland on the other, several meetings were held and many negotiations were carried on while Davidson was present which resulted in Samuel Friedland finally offering to purchase the subject property for the price of $700,000. The actions of Davidson were reported back to the Superior Court of California which approved the contract.

[3, 4] Obviously, someone had to act as guardian for Zetterlund and since he was in California and had lived there approximately four years, California was the only state which had jurisdiction of the person as well as of subject matter and the court of competent jurisdiction in that State was the only court which could have appointed a guardian for Zetterlund. No court in the ordinary administration of justice can exercise jurisdiction over a person unless he shall have voluntarily appeared or is within the jurisdiction of the court so that process may be served upon him.

Undoubtedly, the Superior Court of California had the right to appoint a guardian for Olof Zetterlund and such guardian, once appointed under the laws of California, became entitled to exercise voting rights of shares of stock owned by the ward in domestic as well as foreign corporations. The California guardian, under the laws of that jurisdiction, to all intents and purposes had the title to the stock of her ward—Zetterlund. California adopted as early as 1877 the rule that a guardian has more than bare authority; he has "authority coupled with an interest." See Lincoln v. Alexander, 52 Cal. 482, 28 Am. Rep. 639.

Section 1517 of the California Probate Code reads:

> "A guardian may give proxies to vote any shares of stock of a corporation, whether domestic or foreign, held in the estate, or to exercise any voting rights attaching to or arising from property held in the estate. He may waive notice of and consent to any meeting of shareholders or property owners or authorize by a writing any action which could be taken by shareholders."

[5] Under the circumstances of this case, we are impelled to the view that the courts of Florida should give full faith and credit to the orders and judgments of the Superior Court of California which appointed the guardian of Olof Zetterlund and which authorized and approved the transaction consummated as a result of the guardian's proxy voting the ward's share of stock owned in the Florida corporations. The full faith and credit clause of the Federal Constitution requires that the courts of this State recognize the action of the California court in the appointment of the guardian, in the construction of the legality of that appointment and the actions of the guardian as such, so long as the guardian was acting under the laws of the

State of California and consistently with the provisions thereof.

It is conceded by counsel for appellants that the California guardian could not have sold real property situate in Florida without ancillary proceedings in this State but we think a different rule applies with reference to the voting of shares of stock [intangible personal property to which the rule mobilia sequuntur personam is applicable] in corporations chartered by this State. Indeed the economy of this Nation might well be seriously affected if, in a situation such as is presented to us in this case, it should be generally held that a foreign guardian's action in voting the stock of his ward in a foreign jurisdiction was absolutely void. Moreover, such ruling in this case would do violence to the full faith and credit clause of the Federal Constitution.

Many cases from other jurisdictions have been cited which uphold the right of a foreign guardian or personal representative to vote stock owned by the ward or the estate when such stock is a part of the corporate stock of foreign corporations, particularly where the law of the state in which the guardian or personal representative is appointed gives that right and where under the laws of that state the executor, guardian or personal representative has title to the stock so voted. See Fletcher Cyclopedia Corporations, Permanent Edition, paragraph 2037; Kane v. Paul, 14 Pet., U.S., 33, 40, 10 L.Ed. 341, 345; Noonan v. Bradley, 9 Wall., U.S., 394, 399, 19 L.Ed. 757, 759; Griffith v. Frazier, 8 Cranch, U.S., 9, 21, 3 L.Ed. 471, 475; Elevator Supplies Co. v. Wylde, 106 N.J.Eq. 163, 150 A. 347; In re Election of Directors of Cape May & D. B. N. Company, 51 N.J.L. 78, 16 A. 191; American & British Mfg. Company v. International Power Co., 173 App.Div. 319, 159 N.Y.S. 582; Gow v. Consolidated Coppermines Corporation, 19 Del.Ch.

172, 165 A. 136; Investment Associates, Inc. v. Standard Power & Light Corporation, 29 Del.Ch. 225, 48 A.2d 501.

[6, 7] If this were not a case in which we are required by the Federal Constitution to give full faith and credit to the orders and judgments of the Superior Court of California, we would, nevertheless, be required to recognize the legislative enactments of California and the judicial acts of the Superior Court of that State as a matter of comity. In the case of Herron v. Passailaigue, 92 Fla. 818, 110 So. 539, 542, we said: "The rules of comity may not be departed from, unless in certain cases for the purpose of necessary protection of our own citizens, or of enforcing some paramount rules of public policy."

Upon the subject of the appointment of a guardian for an incompetent person neither the law nor the public policy of this State is inimical to the law and public policy of the State of California. Our statute, Section 746.01, F.S.A., which was in full force and effect at the time of the appointment of Dora Miller as guardian of Olof Zetterlund by the Superior Court of California, provided that a guardian might be appointed for an incompetent person whether such person was "permanently or temporarily residing in this state". There is no provision of our law which requires a foreign guardian to take out ancillary proceedings in this State in order *to vote shares of corporate stock,* nor is there any prohibition in the law of Florida against a guardian appointed in this State voting shares of stock owned by the ward in corporations chartered under the laws of a sister state or states. There is every reason why the public policy of California and Florida should be similar with reference to the subject of appointing guardians for incompetent persons within the borders of such states whether residing therein permanently or temporarily. It is doubtful that any two states in this Nation parallel one another in so many ways as do Florida and California. Each state is a Mecca for tourists. It is a matter of common knowledge that many visitors to both States are approaching the evening tide of life. Such persons constitute the primary group in which is found the largest percentage of incompetents. The laws of both States should, and do, throw every safeguard around incompetents within their borders and when a court of competent jurisdiction in either State appoints a guardian for an incompetent person the lawful actions of such guardian should be recognized by the courts of the other.

It has not been made to appear by the evidence in this case or as a matter of law that the public policy or any salutary interest of the State of Florida requires that we refuse to recognize the orders and judgments entered by the Superior Court of California.

[8] We do not find in the record proof of the character required to establish actual fraud. Certainly there is no proof which is so clear, convincing and unequivocal as to stamp Mr. Samuel Friedland with the ignominy of actual fraud. Every day honorable business men in making offers for the purchase of property place a limitation of time for the acceptance of such offers which may vary from a matter of hours to days or weeks. Since we have hereinbefore concluded that Mr. Friedland's knowledge of the fact that Olof Zetterlund was incompetent, and had been adjudged so by a court of competent jurisdiction in the State of California was not sufficient to justify the conclusion that Friedland was guilty of constructive fraud, there is no reason for us to fail to recognize his right to rely upon the orders and judgments of the California court and the action taken by the guardian appointed by that court through her proxy in voting the shares of stock owned by the ward in the two Florida corporations. Nor is there

any reason for us to refuse to recognize the orders and judgments of the California court whether by virtue of the full faith and credit clause of the Federal Constitution or under the rule of comity.

The California court is a court of competent jurisdiction. It is by law vested with jurisdiction of the subject matter and acquired, for the purpose of determination of the questions presented to it, jurisdiction of the person of Olof Zetterlund.

It now appears from the decision rendered in the case of Nelson v. Miller, 9 Cir., 1952, 201 F.2d 277, that after our decision of Miller v. Nelson in 1948, 160 Fla. 410, 35 So.2d 288, the Florida Probate Court, acting under its conclusion that it could order the marshalling of assets in California as well as in Florida, required Dora Miller and Harold M. Davidson, who were appointed executors under the will, admitted to probate in California, to deliver their assets in California to the Florida executor. The executors appointed in California refused to recognize that order and so the Florida executors brought a suit in the United States District Court for the Southern District of California, Central Division, asking that the said Federal court enforce the order of the Probate Court of Dade County, Florida, and direct that the California executors cease their administration and give up their assets to the Florida personal representatives. That court refused to do so, and on appeal the Circuit Court of Appeals for the Ninth Circuit upheld the position of the California court and recognized the validity of the California decrees, stating (see, 201 F. 2d at page 279):

> "Each state of the Union is sovereign and under the federal Constitution full faith and credit must be given judgments of each state by every other state within the Union. Art. IV, § 1, Constitution, U.C.S.A.

Full faith and credit means that a judgment in one state must in the other state be given the full effect it is given by the law and usage in the state of its origin. And, too, the judgments of a state must be given the same full faith and credit in federal courts. Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed. 565; 28 U.S.C.A. § 1738; Foster Milburn Co. v. Chinn, 2 Cir., 1913, 202 F. 175, 177. Such meaning obviously presupposes that the judgment is within the subject matter jurisdiction of the court pronouncing it. Hence inquiry on that point is always in order. Tilt v. Kelsey, 1907, 207 U.S. 43, 59, 28 S.Ct. 1, 52 L.Ed. 95. * * *

"Appellees here, after starting proceedings in the California court to probate the will and codicil upon the theory of decedent's California domicile at time of death, sought ancillary administration of property in Florida. Appellant here, after starting proceedings in Florida on the theory of decedent's domicile in that state at the time of death and after domiciliary proceedings had been denied to appellees in Florida, sought to compel the delivery of possession of the California property into the jurisdiction of the Florida court for administration. The difficulty, of course, devolved around the conflicting findings as to the domicile of decedent at time of death.

"There is, however, no authority for the claim made herein by appellant in his complaint below and made by appellees in their cross complaint below, that property of a decedent situated in one state can be required by any court to be administered by a court of another state, or that a federal court can interfere in a conflict resulting from irreconcilable findings of the two jurisdictions. Contrary and irreconcilable findings of the Florida and California courts as to the domicile of decedent at the time of death do not throw the conflict into a federal court for its resolution. Each state court can stand upon its findings as to domicile and apply its probate laws to the estate property situate within it. Having no jurisdiction over property outside its borders, its orders as to such property imposed no

> duty upon another state to recognize them on the doctrine of full faith and credit.
>
> "Whatever may be the ultimate effect of the Florida court judgment as to the rights of heirs and beneficiaries under the will or under the will with the codicil, the right of possession of the probate court of either Florida or California as to property within the respective states cannot be affected."

[9] If we adhere to this doctrine as established by the said Federal decision, then we are required to give full faith and credit to the proceedings in the Superior Court of California, Los Angeles County, which took place during the period of the guardianship administration. We cannot see how there could be any conflict as to jurisdiction between the States of California and Florida during the period of the guardianship proceedings because we hold to the rule that intangible personal property in contemplation of law, accompanies the person of the owner. See State ex rel. United States Sugar Corporation v. Gay, Fla., 46 So.2d 165; State ex rel. Seaboard Air Line Railroad v. Gay, 160 Fla. 445, 35 So. 2d 403.

It is not proper for us to, nor do we, decide whether the California or Florida executors now hold title to the Zetterlund stock in Halland Land Company and Elsinore Beach Corporation for the purpose of administration of the estate of Olof Zetterlund. We simply hold that during the guardianship proceedings the California guardian had the right under the directions of the California court to vote the stock in those two corporations and, having done so, no subsequent personal representative can complain.

As we have heretofore indicated, we do not intend to substitute our judgment for that of the Chancellor but will, and do, accept his finding of fact that the price paid for the property ($700,000) was grossly inadequate. We are, however, impelled to make several observations in connection with this subject. The partition suit instituted by Weaver and McGarry in 1941 was continued indefinitely for the very purpose of securing a better price for the property than it was considered by all parties concerned said property would bring at that time. During the period in which we were engaged in World War II, or at least until the last stages of said war, world conditions were such that people could not predict what the future had in store for this Nation and were naturally hesitant about investing in wild, low-lying unfilled and unimproved acreage which would require the expenditure of large sums for dredging, filling, bulkheading and other necessary improvements before it could be sub-divided, placed upon the market and profitably sold.

Although the property was offered widely to various interests and through numerous brokers, no bids were received which warranted serious consideration until during the winter and early spring of 1945 when some bids were received ranging from $500,000 to $550,000.

After Mr. Rasco and Mr. Davidson, while obviously indulging in "puffing", told Mr. Jamison and Mr. Friedland that they felt they might be able to get someone to pay a sum slightly in excess of $650,000, Friedland made his final offer of an additional $50,000 which was accepted.

Thereupon in June, 1945, the contract of purchase and sale was entered into by and between Halland Land Company and Elsinore Beach Corporation on the one hand and Samuel Friedland on the other. Mr. Davidson in his capacity as proxy approved said contract; his approval was subject, however, to the final approval of the Superior Court of Los Angeles County, California. Said court subsequently approved the transaction. None of the orders of the California court were ever impeached in that jurisdiction.

[10] It is a matter of common knowledge that when real property is placed upon the open market for a reasonable length of time, in the absence of fraud, the price which it brings is usually accepted as the fair current market value thereof.

[11] Under all the circumstances of this case and particularly in view of the fact that there was no fraud, either actual or constructive, at least upon the part of Samuel Friedland, we cannot be persuaded to hold that the price paid for the property was so grossly inadequate as to shock the conscience of a court of equity sufficiently to justify rescission based only upon inadequacy of consideration.

We deem it proper to remand, and to reinvest the Chancellor with jurisdiction of, this cause for he may, in the light of this opinion and in view of our reversal of the final decree as it affects Beverly Beach Properties, Inc., wish to consider anew the claims of Rasco and Burdet. That part of the final decree wherein all costs were taxed against Beverly Beach Properties, Inc., be and it is hereby also reversed with directions to the learned Chancellor that he reconsider the matter of the assessment of costs which were originally directed to be paid by the losing party. The decree of the lower court is not reversed as to E. L. Lockhart.

Reversed and remanded.

ROBERTS, C. J., and THOMAS, MATHEWS and DREW, JJ., concur.

TERRELL, J., dissents.

SEBRING, J., not participating.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 62

GUSTAF RENSTA, d.b.n.c.t.a. of the Estate of Olof Zetterlund, Deceased, substituted in the place of Samuel Nelson, as Executor, now Deceased; *et al.*,
Petitioners,

vs.

BEVERLY BEACH PROPERTIES, INC., a Florida corporation; JAMES Q. BURDET; *et al.*,
Respondents.

PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

October Term, 1954

Gustaf Rensta, d. b. n. c. t. a. of the Estate of Olof Zetterlund, Deceased, substituted in the place of Samuel Nelson, as Executor, now Deceased; *et al.*,

Petitioners,

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Respondents.

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The Brief in Opposition to Certiorari filed by respondent Beverly Beach Properties, Inc. incorrectly states (1) the issues presented (2) the decision in *Nelson* v. *Miller*, 201 F. 2d 277 (3) the California statutory law, and (4) the decision in *May* v. *Anderson*, 345 U. S. 528.

The issue of the validity of the California guardianship proceedings is the core of this case.

It is indisputable that the crucial issue in this case is whether or not the California guardianship proceedings constituted valid authority for the sale which petitioners seek to rescind.

This issue was raised in the first paragraphs of the complaint[1]; the trial court decided it in its first Conclusion of Law[1]; the Supreme Court of Florida devoted the major portion of its opinion on the first appeal to a resolution of this issue[2]; and the entire burden of the opinion for which review is now sought is that the California proceedings were entitled to recognition in Florida and are dispositive of petitioner's contentions.[3]

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[1] "The said California incompetency proceedings (Exhibit 1) was absolutely of no force and effect in the State of Florida; the said Dora Miller as guardian of the person and estate of Olof Zetterlund, acting under the authority of the said California court (Exhibit 1) could exercise no powers or functions within the State of Florida, for that: * * *" (R. 65).

It is incredible on this record that respondent should maintain, as it now does for the first time, that the California guardianship proceedings are "only collaterally involved" (Brief in Opposition, p. 3). Respondent resorts to two devices to support its new conception of the issues of the case.

In the first place, respondent harps on the fact that the property involved was deeded over by two Florida corporations (Brief in Opposition, pages 2, 3, 4, 6, 8, 9, 12, 17 and 18) as if this circumstance expunged the roles of the California court and the guardian in the transaction. Manifestly, those deeds were completely null and void unless authorized by the stockholders of the corporations. At that time the sole stockholder was the incompetent, Zetterlund. The stock was voted by the California guardian for Zetterlund. The contract of sale was made expressly subject to the approval of the California Court. Further, the consummation of the transaction required the attorney, Davidson, to perform numerous other activities in Florida, including signing the contract of sale and voting at directors' meetings (Petition, pages 11-12). The question was thus directly raised—and it was squarely decided by the Florida Court—of whether or not the guardian was validly appointed and the voting and other activities validly authorized and approved.

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[1] "That the Guardian, Dora M. Miller, appointed by the California Court, had no authority to function as such in Florida, and had no authority to give a proxy to her attorney to bind Zetterlund in Florida" (R. 216).

[2] "The fact that a foreign guardian has no authority to function in Florida without taking ancillary guardianship proceedings is too academic to require supporting authority" (R. 509). "We think the trial Court was correct in holding that Olof Zetterlund was at all times a citizen and resident of the State of Florida and that the guardian appointed by the Superior Court of California had no authority whatever to function as such in this State" (R. 510).

[3] "* * * we are impelled to the view that the courts of Florida should give full faith and credit to the orders and judgments of the Superior Court of California which appointed the guardian of Olof Zetterlund * * *" (R. 918). "If this were not a case in which we are required by the Federal Constitution to give full faith and credit to the orders and judgments of the Superior Court of California, we would, nevertheless, be required to recognize the legislative enactments of California and the judicial acts of the Superior Court of that State as a matter of comity" (R. 919).

Secondly, respondent seeks to avoid the federal question presented by this case by maintaining that it *could* have been decided on other grounds (Brief in Opposition, page 9).

The fact is that the alleged equitable grounds for denying relief to petitioners were urged by respondent during the trial and were expressly decided against respondent and in favor of petitioners.[1] Thus, while respondent argues that the case could have been decided in its favor on non-federal grounds, the fact is that those alleged non-federal grounds were decided against respondent.

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[1] The trial court concluded on the first trial as follows:

> "21. That Nelson, as Executor, or as a stockholder, has not been estopped to question the acts of the board of directors or the officers of the corporation.
>
> "22. That no sufficient justification exists to excuse the failure of plaintiff Nelson to serve some notice on the buyer, by the Fall of 1945 as to a disaffirmance of the purported sale contemplated by the agreement of June 9, 1945.
>
> "23. That this unreasonable delay should not necessarily bar rescission, but may bar rescission without restitution to the buyer.
>
> "24. That in equity the sale of the land should be rescinded, but only upon some fair restitution, if that can be done, otherwise rescission should be denied" (R. 219).

These findings were affirmed by the Supreme Court of Florida on the first appeal (R. 537). On the second trial the trial court again considered the equitable defenses and held that "the fault lies with the buyer" and that "the plaintiff is entitled to a rescission as determined by the decree of February 18, 1949, upon equitable conditions" (R. 616). The trial court's findings were affirmed by the Supreme Court of Florida (R. 891-892) and were never reversed, even in the opinion which petitioners seek to have reviewed by this Court.

Furthermore, it is irrelevant that the case might have been decided on non-federal grounds in favor of respondent. This Court "cannot refuse jurisdiction because the state court might have based its decision, consistently with the record upon an independent and adequate non-federal ground." *Indiana ex rel Anderson* v. *Brand,* 303 U. S. 95, 98.

***Nelson* v. *Miller*, 201 F. 2d 277, was in no wise concerned with and did not adjudicate the issue of the validity of the California guardianship proceedings.**

The Brief in Opposition is guilty of a transparent misinterpretation of the litigation entitled *Nelson* v. *Miller*, 201 F. 2d 277 (9 Cir. 1952).

The Brief in Opposition strongly implies (if, indeed, it does not state) that that litigation placed in issue the validity of the California guardianship proceedings, and that an adverse decision was suffered there by one of the plaintiffs in this suit and his attorney (Brief in Opposition, page 15).

This suggestion is utterly without foundation. *Nelson* v. *Miller* only concerned the validity of the appointment of Dora Miller and Harold Davidson as *executors* in California of the Estate of Zetterlund, and in no way involved Dora Miller's appointment as *guardian.*

The facts are these: Miller and Davidson were appointed co-executors of Zetterlund's Estate in California (P. App. 89). Burdet was appointed curator in Florida (P. App. 43). Miller and Davidson (P. App. 51-53) and the State of California (P. App. 66-68) petitioned the Florida court for the revocation of Burdet's appointment and for issuance of letters testamentary to them. Florida held that Zetterlund was domiciled in Florida and denied the petition (160 Fla. 410, 35 So. 2d 288, reprinted as Appendix B in our Petition, pp. 4a-15a; see also P. App. 74-76). Thereafter, Nelson was appointed executor in Florida (P. App. 77-78) and brought suit in the United States District Court in California, asking that full faith and credit be given to this Florida decision, and that Miller and Davidson be enjoined from acting as co-executors in California. Subsidiary causes of action asserting a resulting trust and seeking an accounting, by reason of alleged depredations of Zetterlund's property by Dora Miller, were also alleged (P. App. 128-141). Miller and Davidson counterclaimed for a decree that Zetterlund was a California domiciliary and that California had exclusive jurisdiction over his estate. There was not even a mention of the California guardianship proceedings either in the complaint or in the answer or counterclaim[1] (P. App. 143-151). The District Court dismissed both the complaint and the counterclaim on the grounds that it had no jurisdiction over the subject matter and that the Florida proceedings were not entitled to full faith and credit. The Court of Appeals for the Ninth Circuit affirmed, concluding its opinion as follows:

> "It follows that the United States district court was right in holding that it had no jurisdiction to determine whether decedent was domiciled in Florida or in California, and had no jurisdiction to disturb the possession of decedent's property, a part thereof presently being administered by a Florida court and a part thereof presently being administered by a California court. The doctrine of full faith and

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[1] The counterclaim is not printed in the Record; the substance of it appears in the opinion, 201 F. 2d at p. 279.

credit is inapplicable to the relief asked" (201 F. 2d at pp. 280-281).[1]

It is therefore manifestly untrue that *Nelson* v. *Miller* involved, much less adjudicated, the validity of the California guardianship proceedings. Yet respondent seems to claim those proceedings are *res adjudicata* on that issue and indeed, on the issues set forth in our Specifications of Error (Brief in Opposition, pp. 18-19), which is also palpably not so.

To the extent that this case is relevant in the present controversy, it tends to impair rather than to support the decision below, for it refuses to accord full faith and credit to a Florida decree.

Section 1517 of the California Probate Code does not provide statutory support for the guardian's act in voting the stock of Zetterlund's corporations.

The Brief in Opposition also seeks to confuse the issues raised by Section 1517 of the California Probate Code pertaining to a guardian's right to vote stock (Brief in Opposition, pages 11-12).

Respondent ignores the circumstance that Section 1517 only empowers the guardian to vote stock "held in the estate". As pointed out in our Petition, at pages 30-31, Sections 1570 and 1571 of the California Probate Code provide that a guardian for a non-resident ward does not hold within the estate property which is itself not within the

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[1] In a long footnote at p. 280 the Court, *inter alia*, quoted from the California Code of Civil Procedure, Section 1913, which reads in part as follows: "* * * the authority of a guardian or committee, or of an executor or administrator, does not extend beyond the jurisdiction of the government under which he was invested with his authority." This statutory restriction is a confirmation of the common law rule. Indeed, under the common law, a person adjudicated incompetent in one State is nevertheless deemed competent in other States, where there has been no adjudication. Beale, *Conflict of Laws*, Vol. II Section 120.9, page 658.

State. Zetterlund's stock certificates were located in Florida, were issued by Florida corporations and represented assets located in Florida.

Although the issue of domicile bears directly on the pertinency of Sections 1570 and 1571, the Brief in Opposition at page 17 maintains that the issue of domicile is irrelevant, and pointedly fails to relate that issue to Section 1517.

It is noteworthy that respondent can find no weightier argument to support its contention that domicile is not at issue, than to observe that domicile is not mentioned in our Specifications of Error (Brief in Opposition, pages 17-18). Respondent must know that, in accordance with the usual practice before this Court, our Petition for a Writ states the Questions Presented (page 17) and then specifies certain additional errors (page 18) on the theory, as stated in our Petition, that the latter will be assigned as error if the writ is granted, but are not themselves advanced as reasons for granting the writ.

Moreover, it is to be noted that the alleged propriety of the California order under California statutory law only touches the issue of whether the California Court exceeded its statutory jurisdiction (see Question 3 of our Questions Presented, at page 17 of our Petition). It has no bearing whatsoever on any of the other Questions Presented, or indeed, on whether the California proceedings were subject to collateral attack because of failure to give the statutory notice.

May v. *Anderson*, 345 U. S. 528, was decided on full faith and credit and not on due process grounds.

In our Petition for a Writ, we pointed out that *May* v. *Anderson*, 345 U. S. 528, holds that a federal question is presented where full faith and credit is erroneously accorded a foreign decree which does not rest on an adequate jurisdictional foundation (Petition, page 19). In an effort to avoid the impact of that case, respondent, at page 20 of its Brief in Opposition, wrongfully paraphrases the opinion:

> "The Probate Court held that it was controlled by the Wisconsin decree, *under the due process clause*, and ordered that the children be turned over to the father." (emphasis supplied)

Actually, the Ohio Probate Court decided the case on the basis of the full faith and credit clause:

> "* * * the Probate Court decided it was obliged by the Full Faith and Credit Clause of the Constitution of the United States to accept the Wisconsin decree as binding upon the mother." (345 U. S. at p. 529)

Conclusion.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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